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GENERAL STATUTES OF NORTH CAROLINA OF 1943

1951 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department of
Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
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AND BEIRNE STEDMAN

Volume 3

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THE GENERAL STATUTES OF
NORTH CAROLINA
OF 1943

1951 CUMULATIVE SUPPLEMENT

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THE MICHIE COMPANY

Volume 3

The General Statutes of North Carolina 1943 1951 Cumulative Supplement

Volume 3

Chapter 106. Agriculture.

Preface

This Cumulative Supplement to volume 3 contains the general laws of a permanent nature enacted at the 1945, 1947, 1949 and 1951 Session of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. The index, appearing in volume 4 of the Cumulative Supplement, is confined mainly to new laws and such amendatory laws as are not reflected in the original index. In addition, the index includes many references enlarging upon the treatment of certain topics found in the original and recompiled volumes of the General Statutes.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1945, 1947, 1949 and 1951 Sessions of the General Assembly affecting chapters 106 through 166 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 223-233 (p. 312).

Federal Reporter 2nd Series volumes 134 (p. 417)-186 (p. 744).

Federal Supplement volumes 49 (p. 225)-95 (p. 248).

United States Reports volumes 318-340 (p. 366).

Supreme Court Reporter volumes 63 (p. 862)-71 (p. 473).

North Carolina Law Review volumes 22 (p. 280)-29 (p. 226).

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Art. 1. Department of Agriculture.

Part 1. Board of Agriculture.

§ 106-9.1. Investment of surplus in agriculture fund in interest bearing government securities.—The board of agriculture, with the approval of the governor and council of state, is hereby authorized and empowered whenever in their discretion there is a cash surplus in the agriculture fund in excess of the amount required to meet the current needs and demands of the department, to invest said surplus funds in bonds or certificates of indebtedness of the United States of America or bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the state of North Carolina. The said funds shall be invested in such obligations as in the judgment of the board of agriculture, the governor, and the council of state may be readily converted into money. The interest and revenue received from such investment or profits realized from the sale thereof shall become a part of the agriculture fund and be likewise invested. (1945, c. 999.)

Part 2. Commissioner of Agriculture.

§ 106-11. Salary of commissioner of agriculture.

Editor's Note.—Session Laws 1947, c. 1041, increased the salary of the commissioner of agriculture to \$7,500.00 per year. And Session Laws 1949, c. 1278, effective April 23, 1949, provides that the salary, from and after the expiration of the present term of office of said officer, shall be \$9,000.00 per year, payable in equal monthly installments.

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

§ 106-25. Department to furnish report books or forms for procuring and tabulating information; appointment and duties of persons collecting and compiling information; information confidential.—The said department shall annually provide and submit report books or forms to the person appointed by the board of county commissioners of the several counties of the state to collect and compile the statistical information required by §§ 106-24 to 106-26. The board of county commissioners may appoint any person to collect such information. The person so appointed shall serve at the will of the county commissioners and shall be paid such compensation for such services as may be deemed proper. Such report books or forms shall be furnished the person so appointed before he enters upon his duties. It shall be the duty of each person so appointed to fill out or cause to be filled out in the report books or forms, herein provided for and received by him, authentic information required to be tabulated therein, and, upon completion of such tabulation, he shall re-

turn and deliver the said books or forms to the board of county commissioners of his county, within ten days after the time prescribed by law for securing the tax lists of his county. The person so appointed shall carefully check said books or forms for the purpose of determining whether or not at least ninety per cent (90%) of the tracts of land of such county are acceptably reported on in such report books or forms. Upon the receipt of the report books or forms properly filled out in accordance with §§ 106-24 to 106-26, the board of county commissioners of each county in the state shall, within ten days after receipt thereof, inspect and transmit or deliver such report books or forms to the department of agriculture. The information required in §§ 106-24 to 106-26 shall be held confidential by all persons having any connections therewith and by the department of agriculture. No information shall be required hereunder on land tracts consisting of less than three acres. (1921, c. 201, s. 2; 1941, c. 343; 1947, c. 540; 1949, c. 1273, s. 1; 1951, c. 1014, s. 1; C. S., s. 4689(b).)

Editor's Note.—The 1947 amendment made changes in the first sentence and the 1949 amendment rewrote the section. The 1951 amendment rewrote the second sentence.

§ 106-26. Compensation for making reports; examination of report books, etc., by department of agriculture.—In order to encourage maximum co-operation and efficiency, the department of agriculture shall pay to the county commissioners of the various counties of the state from appropriations made to the department of agriculture, the sum of twenty cents (20c) per acceptable report received by the department of agriculture in accordance with the provisions of §§ 106-24 to 106-26: Provided, however, that no such payment shall be made for any report from any township which does not cover acceptably at least ninety per cent (90%) of the tracts of land within such townships. In all those cases where the report covers less than eighty per cent (80%) of the tracts of land in a township, the department of agriculture shall withhold from the amount due the county for furnishing such reports the sum of twenty cents (20c) for each farm report shortage, and shall further deduct therefrom the sum of two dollars (\$2.00) for each unauthenticated report. Upon request, all report books or forms which are not complete in accordance with the provisions of §§ 106-24 to 106-26 shall be returned to the county board of commissioners or person charged with the duty of supervising or compiling the statistical survey information, in order that the same may be properly completed to comply with the provisions of this part. (1921, c. 201, s. 3; 1941, c. 343; 1949, c. 1273, s. 2; 1951, c. 1014, s. 2; C. S. 4689(c).)

Editor's Note.—The 1949 amendment rewrote this section.

The 1951 amendment substituted "twenty cents (20c.," for "ten cents (10c.," in the sixth line.

§ 106-26.1. Co-operation of county farm and home demonstration agents and vocational teachers.—It shall be the duty of the county farm and home demonstration agents and vocational teachers to co-operate with the persons designated to obtain the information required by G. S. 106-25 and 106-26, and particularly to inform the farmers as to the advisability and necessity for

obtaining the information necessary to carry out the purposes enumerated in G. S. 106-25 and 106-26. (1951, c. 1014, s. 3.)

Art. 2. North Carolina Fertilizer Law of 1947.

§§ 106-27 to 106-50: Superseded by §§ 106-50.1 to 106-50.22.

See note under § 106-50.1.

§ 106-50.1. Title.—This article shall be known as the "North Carolina Fertilizer Law of 1947". (1947, c. 1086, s. 1.)

Session Laws 1947, c. 1086, effective July 1, 1947, which rewrote Article 2 of Chapter 106 of the General Statutes, as amended by Session Laws 1945, c. 287, has been codified as §§ 106-50.1 to 106-50.22. Section 25 of the act provides: "Any carry over fertilizer in distributors' warehouses on the date on which this act shall become effective may thereafter be sold in the usual course of business."

§ 106-50.2. Enforcing official.—This article shall be administered by the commissioner of agriculture of the state of North Carolina, hereinafter referred to as the "commissioner". (1947, c. 1086, s. 2.)

§ 106-50.3. Definitions.—When used in this article:

(a) The term "person" includes individuals, partnerships, associations, firms and corporations.

(b) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(c) The term "distributor" means any person who offers for sale, sells, barter, or otherwise supplies mixed fertilizers or fertilizer materials.

(d) The term "sell" or "sale" includes exchange.

(e) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of animal and vegetable manures.

(f) The term "mixed fertilizers" means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(g) The term "commercial fertilizer" includes both mixed fertilizer and/or fertilizer materials.

(h) The term "grade" means the minimum percentage of total nitrogen, available phosphoric acid, and soluble or available potash stated in the order given in this paragraph and, when applied to mixed fertilizers, shall be in whole numbers only.

(i) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale and may include a number, trademark, or other designation.

(j) The term "official sample" means any sample of commercial fertilizer taken by the commissioner or his authorized agent according to the methods prescribed in paragraph (b) of § 106-50.7.

(k) The term "ton" means a net ton of two thousand pounds avoirdupois.

(l) The term "per cent" or "percentage" means the percentage by weight.

(m) The term "manufacturer" means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers; and the

term "manufacture" means preparing, mixing, or manufacturing.

(n) The term "specialty fertilizer" means any fertilizer distributed primarily for use on non-commercial crops such as garden, lawns, shrubs, and flowers; and may include fertilizers used for research or experimental purposes.

(o) The term "unmanipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.

(p) The term "manipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, drying, grinding and other means.

(q) In "manipulated manures" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed, and the guarantee being stated in multiples of half (.50) percentages. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2.)

Editor's Note.—The 1951 amendment deleted the words "except unmanipulated vegetables and animal manures" in subsection (e) and substituted the last sentence therefor, and inserted subsections (o), (p) and (q).

§ 106-50.4. Registration of brands.—

(a) Each brand of commercial fertilizer and manipulated manure shall be registered before being offered for sale, sold, or distributed in this state. The application for registration shall be submitted in duplicate to the commissioner on forms furnished by the commissioner, and shall be accompanied by a remittance of \$2.00 per brand and grade as a registration fee. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on July 1st of each year. The application shall include the following information:

(1) The name and address of the person guaranteeing registration.

(2) The brand.

(3) The grade.

(4) The guaranteed analysis showing the minimum percentage of plant food in the following order and form:

A. In mixed fertilizers (other than those branded for tobacco):

Total nitrogen —per cent

(Optional) water insoluble nitrogen —per cent

Percentage of total in multiples of five

Available phosphoric acid —per cent

Soluble or available potash —per cent

Whether the fertilizer is acid-forming or non-acid forming. The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

B. In mixed fertilizer (branded for tobacco):

Field Fertilizer

Total nitrogen —per cent

(Optional) nitrogen in the form

of nitrate —per cent

percentage of total in multiples of five.

Water insoluble nitrogen —per cent

percentage of total in multiples of five.

Available phosphoric acid —per cent

Soluble or available potash —per cent

Maximum chlorine —per cent

Total magnesium oxide —per cent

Plant Bed Fertilizer

Total nitrogen —per cent

(Optional) nitrogen in the form of

nitrate —per cent

percentage of total in multiples of five.

(Optional) water insoluble nitrogen —per cent

percentage of total in multiples of five.

Available phosphoric acid —per cent

Soluble or available potash —per cent

Maximum chlorine —per cent

Total magnesium oxide —per cent

All fertilizer branded for tobacco must contain magnesium equivalent to a minimum of two per cent magnesium oxide for field fertilizer, and one per cent magnesium oxide for plant bed fertilizer. Whether the fertilizer is acid-forming or nonacid forming.

The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton only).

C. In fertilizer materials (if claimed):

Total nitrogen —per cent

Available phosphoric acid —per cent

In the case of bone, tankage, and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid and the degree of fineness.

Soluble or available potash —per cent

Other recognized plant food —per cent

D. In manipulated manures.

Total nitrogen —per cent

Available phosphoric acid —per cent

Soluble or available potash —per cent

(The manures from which nitrogen, phosphoric acid, and potash are derived.)

(5) The sources from which the nitrogen, phosphoric acid, and potash are derived.

(6) Magnesium (Mg) or magnesium oxide (MgO), calcium (Ca) or calcium oxide (CaO), and sulfur (S) may be claimed as secondary plant foods in all mixed fertilizers, but when one or more of these is so claimed the minimum percentage of total magnesium (Mg) or total magnesium oxide (MgO), total calcium (Ca) or total calcium oxide (CaO), and total sulfur (S), as applicable, shall be guaranteed; excepting that the sulfur guarantee for fertilizers branded for tobacco shall be both the maximum and the minimum percentages.

(7) Borax may be claimed as an ingredient of mixed fertilizers. If claimed, it shall be guaranteed in terms of pounds of borax ($\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$) per 100 pounds of fertilizer and in increments of $\frac{1}{4}$, $\frac{1}{2}$, and multiples of $\frac{1}{2}$ pound per 100 pounds of fertilizer. The guarantee will be considered both a minimum and a maximum guarantee. The analysis guarantee shall be on a separate tag as prescribed by the Commissioner.

(8) Additional plant food elements, compounds, or classes of compounds, determinable by chemical control methods, may be guaranteed only by permission of the commissioner by and with the advice of the director of the experiment station. When any such additional plant food elements, compounds, or classes of compounds are included

in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the commissioner. The commissioner shall also fix penalties for failure to fulfill such guarantees.

(9) In no case, except in the case of unacidulated mineral phosphates and/or basic slag unmixed with other materials shall both the terms total phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the commissioner and the change is noted on the container of tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the commissioner of such change 30 days in advance of such registration; that if the commissioner, after consultation with the director of the agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the commissioner shall give due publicity to said changes through the Agricultural Review and/or by such other means as he may deem advisable. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6.)

Editor's Note.—The 1949 amendment inserted in subsection (4) B a provision in regard to minimum magnesium content of fertilizers branded for tobacco. The 1951 amendment inserted the words "and manipulated manure" in the first line of subsection (a), rewrote subsection (a) (4) B, added D under (a) (4) and rewrote subsection (a) (7).

§ 106-50.5. Labeling.—

(a) Any commercial fertilizer offered for sale, sold, or distributed in this state in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by paragraph (a), with the exception of item (5), of § 106-50.4 printed either (1) on tags to be affixed to the end of the package or (2) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the container shall not be less than 2 inches in height for containers of 100 pounds or more; not less than 1 inch for containers of 50 and 99 pounds; and not less than $\frac{1}{2}$ inch for packages of less than 50 pounds. In case of fertilizers sold in containers on which the brand or other designations of the distributor do not appear, the grade

must appear in a manner prescribed by the commissioner on tags attached to the container.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by paragraph (a), with the exception of item (5), of § 106-50.4, shall accompany delivery and be supplied to the purchaser.

(c) If mixed fertilizer is sold or intended to be sold in bags weighing more than 100 pounds, each bag must have a tag attached thereto, of a type approved by the commissioner, showing the grade of the fertilizer contained therein. Such tag must be attached between the ears of each bag, or in the case of a machine sewed bag, approximately at the center of the sewed end of the bag: provided, that in lieu of such tag the grade of the fertilizer may be printed on the end of the bag in readily legible numerals. (1947, c. 1086, s. 5; 1949, c. 637, s. 2.)

Editor's Note.—The 1949 amendment added subsection (c).

§ 106-50.6. Inspection fees.—

(a) For the purpose of defraying expenses of the inspection and of otherwise determining the value of commercial fertilizers in this state, there shall be paid to the department of agriculture a charge of twenty-five cents per ton or one cent for each individual package containing fifty pounds net or less and more than five pounds of such commercial fertilizers, which charge shall be paid before a delivery is made to agents, dealers, or consumers in this state. Each bag, barrel, or other container of commercial fertilizer shall have attached thereto a tag to be furnished by the department of agriculture stating that all charges specified in this section have been paid, and the commissioner, with the advice and consent of the board of agriculture is hereby empowered to prescribe a form for such tags, and to adopt such regulations as will insure the enforcement of this law. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county: Provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) The tax tags required under this section shall be issued each fiscal year (July 1st-June 30th) by the commissioner and be sold to persons applying for same at the rate provided in paragraph (a) of this section. Undetached tags left in the possession of persons registering commercial fertilizers at the end of any fiscal year (July 1st-June 30th) may be exchanged for tags of the succeeding year, on or before September first.

(c) If any distributor of fertilizer shall desire to ship in bulk any commercial fertilizers, the said distributor of fertilizer shall send with the bill of lading sufficient cancelled tax tags to pay the tax on the amount of goods shipped, and the agent of the railroad or other transportation company shall deliver the tags to the consignee when the goods are delivered. If otherwise delivered, the distributor shall associate such tags or stamps to each lot or with some document relating thereto.

(d) On individual packages of five pounds or less, there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars (\$25.00) for each brand offered for sale, sold, or distributed.

(e) Any distributor of fertilizer may make application to the commissioner of agriculture for a permit to report the tonnage of fertilizer sold and pay the inspection fee of 25 cents per ton on the basis of the report, in lieu of affixing inspection tags or stamps.

(f) The commissioner may, in his discretion, grant such permit. The issuance of all permits will be conditional on the applicant's satisfying the commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of fertilizer sold in the state.

(g) In the event such permit is granted by the commissioner, the distributor must, as a further condition thereto, grant to the commissioner or his duly authorized representative permission to examine such records and verify the tonnage statement.

(h) The tonnage report shall be monthly and the inspection fee shall be due and payable monthly, on the tenth of each month, covering the tonnage and grade of fertilizer sold during the past month.

(i) The report shall be under oath and on forms furnished by the commissioner.

(j) If the report is not filed and the inspection fee paid by the tenth day following due date or if the report of tonnage be false, the commissioner may revoke the permit; and if the inspection fee be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required.

(k) In order to guarantee faithful performance each distributor shall before being granted a permit to use the reporting system deposit with the commissioner cash in the amount of one thousand dollars (\$1000.00) or securities acceptable to the commissioner of a value of at least one thousand dollars (\$1000.00) or shall post with the commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. (1947, c. 1086, s. 6; 1949, c. 637, s. 3.)

Editor's Note.—The 1949 amendment added subsections (e)-(k).

§ 106-50.7. Sampling, inspection and testing.—

(a) It shall be the duty of the commissioner, who may act through his authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers offered for sale, sold, or distributed within the state at such time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this article. The commissioner, individually or through his agent, is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to the provisions of this article and the rules and regulations thereto.

(b) The methods of sampling shall be as follows:

(1) For the purposes of analysis by the commissioner or his duly authorized chemists and for comparison with the guarantee supplied to the commissioner in accordance with §§ 106-50.4

and 106-50.5, the commissioner, or any official inspector duly appointed by him, shall take an official sample of not less than one pound from containers of commercial fertilizer. No sample shall be taken from less than five containers. If the lot comprises five (5) or more containers, portions shall be taken from each one up to a total of ten (10) containers. If the lot comprises from ten (10) to one hundred (100) containers, portions shall be taken from ten (10) containers. Of lots comprising more than one hundred (100) containers, portions shall be taken from ten (10) per cent of the total number of containers.

(2) In sampling commercial fertilizers, in bulk, either in a factory or a car, at least ten portions shall be drawn and these from different places so as fairly to represent the pile or car lot.

(3) In sampling, a core sampler shall be used that removes a core from a bag or other package from top to bottom, and the cores taken shall be mixed on clean oil cloth or paper, and if necessary shall be reduced after thoroughly mixing, by quartering, to the quantity of sample required. The composite sample taken from any lot of commercial fertilizer under the provision of this paragraph shall be placed in a tight container and shall be forwarded to the commissioner with proper identification marks.

(4) The commissioner may modify the provisions of this section to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling commercial fertilizers which shall have been adopted by the Association of Official Agricultural Chemists or by the Association of American Fertilizer Control Officials. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this article in lieu of those prescribed in items (1), (2), and (3) of this section.

(5) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise.

(6) The commissioner shall refuse to analyze all samples except such as are taken under the provisions of this section and no sample unless so taken shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this article.

(7) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the department of agriculture, setting forth the analysis made by the chemist of the department of agriculture, of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions.

(c) The methods of analysis shall be those adopted as official by the board of agriculture and shall conform to the methods prescribed by the Association of Official Agricultural Chemists or by the Association of American Fertilizer Control Officials. In the absence of methods prescribed by either of these associations, the commissioner shall prescribe the method of analysis.

(d) The result of official analysis of any commercial fertilizer which has been found to be subject to penalty shall be forwarded by the commission to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the commissioner, the report shall become official. Upon request the commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

(e) Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed if taken in accordance with the following rules and regulations:

(1) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(2) The sample shall be drawn in the presence of the manufacturer, seller, or a representative designated by either party together with two disinterested freeholders; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested freeholders: Provided, any such sample shall be taken with the same type of sampler as used by the inspector of the department of agriculture in taking samples and shall be drawn, mixed, and divided as directed in paragraphs (1), (2), (3), (4), and (5) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the commissioner.

(3) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the state as those drawn by the commissioner or any official inspector appointed by him as provided for in subsection (b) of this section.

(4) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer

material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section does not conform to the provisions of this article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this state during such season, employed such ingredients as are outlawed by the provisions of this article, or unless it shall appear to the commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods. (1947, c. 1086, s. 7.)

§ 106-50.8. Plant food deficiency.—

(a) The commissioner in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in paragraph (j) of § 106-50.3, and as provided for in paragraphs (b), (c), and (d) of § 106-50.7.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) Total nitrogen: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one per cent on goods that are guaranteed two per cent; 0.25 of one per cent on goods that are guaranteed three per cent; 0.35 of one per cent on goods that are guaranteed four per cent; 0.40 of one per cent on goods that are guaranteed five per cent up to and including eight per cent; 0.50 of one per cent on goods guaranteed above eight per cent up to and including thirty per cent; and 0.75 of one per cent on goods guaranteed over thirty per cent.

(2) Available phosphoric acid: A penalty of three times the value of the deficiency, if such deficiency exceeds 0.40 of one per cent on goods that are guaranteed up to and including ten per cent; 0.50 of one per cent on goods that are guaranteed above ten per cent up to and including twenty-five per cent; 0.75 of one per cent on goods guaranteed over twenty-five per cent.

(3) Soluble or available potash: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one per cent on goods that are guaranteed two per cent; 0.30 of one per cent on goods that are guaranteed three per cent; 0.40 of one per cent on goods guaranteed four per cent; 0.50 of one per cent on goods guaranteed above four per cent guaranteed above eight per cent up to and including twenty per cent; and 1.00 per cent on goods guaranteed over twenty per cent.

(4) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five per cent (or one hundred pounds of calcium carbonate equivalent per ton) from the guarantee, then a penalty of fifty cents per ton for each fifty pounds calcium carbonate equivalent, or fraction thereof in excess of the one hundred

pounds allowed, may be assessed and paid as under paragraph (c) of this section.

(5) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of one per cent, a penalty shall be assessed equal to ten per cent of the value of the fertilizer for each additional 0.5 of one per cent of excess or fraction thereof.

(6) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.10 of one per cent on goods guaranteed up to and including fifty-hundredths per cent; 0.20 of one per cent on goods guaranteed from five-tenths per cent to one per cent; 0.30 of one per cent on goods guaranteed from one per cent to two per cent; 0.50 of one per cent on goods guaranteed above two per cent and up to and including five per cent; and 1.00 per cent on goods guaranteed over five per cent.

(7) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.10 of one per cent for goods guaranteed up to and including five-tenths per cent; 0.15 of one per cent for goods guaranteed from five-tenths to one per cent; 0.25 of one per cent for goods guaranteed from one to two per cent; and 0.35 of one per cent for goods guaranteed above two per cent.

(8) Total magnesium or total magnesium oxide: If the magnesium content found falls as much as 0.30 of one per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.15 of one per cent additional deficiency or fraction thereof. If the magnesium oxide content found falls as much as 0.50 of one per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.25 of one per cent additional deficiency or fraction thereof.

(9) Total calcium or total calcium oxide: If the calcium content found falls as much as 0.70 of one per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.35 of one per cent additional deficiency or fraction thereof. If the calcium oxide content found falls as much as 1.00 per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.50 of one per cent additional deficiency or fraction thereof.

(10) Sulfur: If the sulfur content is found to be as much as 1.50 per cent below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of fifty cents per ton for each 0.50 of one per cent additional excess or fraction thereof, shall be assessed.

(11) Deficiencies or excesses in any other constituent or constituents covered under items (6) and (7), paragraph (a), § 106-50.4 which the registrant is required to or may guarantee shall be evaluated by the commissioner and penalties therefor shall be prescribed by the commissioner.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the commissioner to the distributor, receipts taken there-

for, and promptly forwarded to the commissioner: Provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the commissioner who shall deposit the same in the department of agriculture fund, of which the state treasurer is custodian. Such sums as thereafter shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall be paid from said fund on order of the commissioner and may be used by the commissioner as he may see fit for the purpose of promoting the agricultural program of the state. (1947, c. 1086, s. 8.)

Editor's Note.—Paragraph (b) (3) of this section is printed just as it appears in the authenticated copy of the act. However, there seems to be something missing in line eight between "per cent" and "guaranteed."

§ 106-50.9. Determination and publication of commercial values. —

For the purpose of determining the commercial values to be applied under the provisions of § 106-50.8, the commissioner shall determine and publish annually the values per pound of nitrogen, phosphoric acid, and potash in commercial fertilizers in this state. The values so determined and published shall be used in determining and assessing penalties. (1947, c. 1086, s. 9.)

§ 106-50.10. Minimum plant food content.—No superphosphate containing less than eighteen per cent available phosphoric acid nor any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble or available potash totals less than twenty per cent may be offered for sale, sold, or distributed in this State except for one grade of tobacco plant bed fertilizer in which the sum of the guarantees for total nitrogen, available phosphoric acid, and soluble or available potash shall not total less than sixteen per cent and except for complete field fertilizer containing twenty five per cent or more of their nitrogen in water insoluble form of plant or animal origin, in which case the total nitrogen, available phosphoric acid, and soluble or available potash need not total more than eighteen per cent. (1947, c. 1086, s. 10; 1951, c. 1026, s. 7.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 106-50.11. Grade list. — The board of agriculture, after a public hearing open to all interested parties, and upon approval by the director of the agricultural experiment station, shall, prior to June 30th of each year or as early as practicable thereafter, promulgate a list of grades of mixed fertilizer adequate to meet the agricultural needs of the state. After this list of grades has been established, no other grades of mixed fertilizers shall be eligible for registration. The commissioner may revise this list of grades by conforming to the procedure prescribed in this section.

It is provided, however, that any distributor may be permitted to sell one but not exceeding one grade of specialty fertilizer not on the current approved list. The Commissioner may, in his discretion, require a sample label to be submitted before registering such fertilizer. (1947, c. 1086, s. 11; 1951, c. 1026, s. 8.)

Editor's Note.—The 1951 amendment deleted the words "brand and" formerly appearing in the third line of the second paragraph.

§ 106-50.12. False or misleading statements.— It shall be unlawful to make any false or misleading statement or representation in regard to any commercial fertilizer offered for sale, sold, or distributed in this state, or to use any misleading or deceptive trademark or brand name in connection therewith. The commissioner is hereby authorized to refuse the registration of any commercial fertilizer with respect to which this section is violated. (1947, c. 1086, s. 12.)

§ 106-50.13. Grade-tonnage reports.— Each person registering commercial fertilizers under this article shall furnish the commissioner with a confidential written statement of the tonnage of each grade of fertilizer sold by him in this state. Said statement shall include all sales for the periods of July first to and including December thirty-first and of January first to and including June thirtieth of each year. The commissioner may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within thirty days from date of the close of each period. The commissioner, however, in his discretion, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operations of any person. (1947, c. 1086, s. 13.)

§ 106-50.14. Publication of information concerning fertilizers.— The commissioner shall publish at least annually, in such forms as he may deem proper, complete information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses based on official samples of commercial fertilizers sold within the state as compared with the analyses guaranteed under §§ 106-50.4 and 106-50.5: Provided, however, that the information concerning production and use of commercial fertilizers shall be shown separately for periods July first to December thirty-first and January first to June thirtieth of each year, and that no disclosure shall be made of the operations of any person. (1947, c. 1086, s. 14.)

§ 106-50.15. Rules, regulations and standards.— The board of agriculture is authorized, after public hearing, to prescribe such rules and regulations as may be found necessary for the enforcement of this article; and, upon recommendation of the director of the agricultural experiment station, to prescribe maximum chlorine for tobacco fertilizer. The board of agriculture is also authorized to regulate the weight of bags and/or packages in which fertilizer may be sold or offered for sale. (1947, c. 1086, s. 15; 1949, c. 637, s. 4.)

Editor's Note.—The 1949 amendment struck out the former second sentence relating to minimum of magnesium oxide required in tobacco fertilizer and inserted in lieu thereof the present second sentence. The stricken provision now appears in subsection (a) (4) B of § 106-50.4.

§ 106-50.16. Short weight.— If any commercial fertilizer in the possession of the consumer is found by the commissioner to be short in weight, the registrant of said commercial fertilizer shall within thirty days after official notice from the commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. The commissioner may in his discretion allow

reasonable tolerance for short weight due to loss through handling and transporting. (1947, c. 1086, s. 16.)

§ 106-50.17. Cancellation of registration.— The commissioner, upon approval of the board of agriculture, is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this article or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the commissioner. (1947, c. 1086, s. 17.)

§ 106-50.18. "Stop sale", etc., orders.— It shall be the duty of the commissioner to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this article until the law had been complied with and said commercial fertilizer is released in writing by the commissioner or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18.)

§ 106-50.19. Seizure, condemnation and sale.— Any lot of commercial fertilizer not in compliance with the provisions of this article shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this article and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this article. (1947, c. 1086, s. 19.)

§ 106-50.20. Punishment for violations.— Each of the following offenses shall be a misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of misdemeanors:

(a) To manufacture, offer for sale, or sell in this state any mixed fertilizer or fertilizer materials containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance that contains inert plant food material or any other substance for the purpose or with the effect of defrauding the purchaser.

(b) To offer for sale or to sell in this state for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(c) To make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this state, or to use any misleading or deceptive trademark or brand in connection therewith. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive and fraudulent.

The commissioner is hereby authorized to refuse registration for any commercial fertilizer with respect to which this section is violated.

(d) The filing with the commissioner of any false statement of fact in connection with the registration under § 106-50.4 of any commercial fertilizer.

(e) Forcibly obstructing the commissioner or any official inspector authorized by the commissioner in the lawful performance by him of his duties in the administration of this article.

(f) Knowingly taking a false sample of commercial fertilizer for use under provisions of this article; or knowingly submitting to the commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any commercial fertilizer sold or offered for sale in this state for the purpose of deceiving or defrauding such other person.

(g) The fraudulent tampering with any lot of commercial fertilizer so that as a result thereof any sample of such commercial fertilizer taken and submitted for analysis under this article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this article, if done prior to such analysis and disposition of the sample under the direction of the commissioner.

(h) The delivery to any person by the fertilizer chemist or his assistants or other employees of the commissioner of a report that is willfully false and misleading on any analysis of commercial fertilizer made by the department in connection with the administration of this article.

(i) Selling or offering for sale in this state commercial fertilizer without marking the same as required by § 106-50.5.

(j) Selling or offering for sale in this state commercial fertilizer containing less than the minimum content required by § 106-50.10.

(k) Failure to obtain and affix tags as provided for in this article. (1947, c. 1086, s. 20.)

§ 106-50.21. Sales or exchanges between manufacturers.—Nothing in this article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers or manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers who have registered their brands as required by the provisions of this article. (1947, c. 1086, s. 21.)

§ 106-50.22. Appeals from assessments and orders of commissioner.—Nothing contained in

this article shall prevent any person from appealing to a court of competent jurisdiction from any assessment or penalty or other final order or ruling of the commissioner or board of agriculture. (1947, c. 1086, s. 22.)

Art. 4. Insecticides and Fungicides.

Editor's Note.—For subsequent law affecting this article, see §§ 106-65.1 to 106-65.12.

§ 106-62. Seizure of articles.—(a) When any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide is found to be sold, offered or exposed for sale in this state in violation of any provisions of this article, or whenever a duly authorized agent of the department of agriculture finds he has probable cause to believe that any insecticide or fungicide is being sold, offered or exposed for sale in this state in violation of any provisions of this article, he shall affix to such insecticide or fungicide a tag, appropriate marking, or shall post a notice on the premises in which said insecticide or fungicide is located, giving notice that such insecticide or fungicide is suspected of being sold, offered or exposed for sale in violation of the provisions of this article or that the same is being sold, offered or exposed for sale in violation of the provisions of this article, and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such Paris green, calcium arsenate, lead arsenate or other insecticides or fungicide by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed insecticide or fungicide by sale or to offer to expose same for sale without such permission.

(b) When an insecticide or fungicide detained or embargoed under subsection (a) has been found by such agent to be sold, offered or exposed for sale in violation of any provisions of this article he shall petition the judge of any recorder's, county or superior court in whose jurisdiction the insecticide or fungicide is detained or embargoed for an order of condemnation of such insecticide or fungicide. When such agent has found that such insecticide or fungicide so detained or embargoed is not being sold, offered or exposed for sale in violation of any of the provisions of this article he shall remove the tag, marking or notice.

(c) If the court finds that the detained or embargoed insecticide or fungicide is being sold, offered or exposed for sale in violation of any of the provisions of this article such insecticide and fungicide shall, after entry of the decree of the court, be destroyed at the expense of the claimant thereof, under the supervision of such agent and all court costs and fees and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that if any insecticide or fungicide can be corrected by proper labeling or processing or by any other correction so that the same will comply with the provisions of this article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such insecticide or fungicide shall be so labeled, processed or corrected, has been executed, may by order direct that such in-

secticide or fungicide be delivered to the claimant thereof for such labeling, processing or correction under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant on representation to the court by the department of agriculture that the insecticide or fungicide is no longer in violation of this article, and that the expenses of such supervision have been paid. (1927, c. 53, s. 11; 1945, c. 668.)

Editor's Note.—The 1945 amendment rewrote this section.

Art. 4A. Insecticide, Fungicide and Rodenticide Act of 1947.

§ 106-65.1. **Title.**—This article may be cited as the Insecticide, Fungicide and Rodenticide Act of 1947. (1947, c. 1087, s. 1.)

Section 15 of the act from which this article was codified made it effective as of Jan. 1, 1948.

§ 106-65.2. **Definitions.**—For the purpose of this article—

a. The term "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest.

b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, bacteria, or weeds, or such other pests as may be designated by the commissioner, but not including simple, mechanical devices such as rat traps, or equipment used for the application of economic poisons when sold separately therefrom.

c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi, or plant disease.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, also nematodes and other worms, or any other invertebrates which are destructive, constitute a liability and may be classed as pests.

h. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and

liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other animals.

i. The term "weed" means any plant which grows where not wanted.

j. The term "ingredient statement" or "guaranteed analysis statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; and, in addition, in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each stated as elemental (metallic) arsenic.

k. The term "active ingredient" means an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

l. The term "inert ingredient" means an ingredient which is not an active ingredient.

m. The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

n. The term "person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

o. The term "board of agriculture" or "board" means the North Carolina board of agriculture.

p. The term "commissioner" means the commissioner of agriculture.

q. The term "registrant" means the person registering any economic poison pursuant to the provisions of this article.

r. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, or relating to the economic poison or device when employed for commercial purposes.

s. The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying or relating commercially to the economic poison or device, except when accurate, non-misleading reference is made to current official publications of the state experiment station, the state college of agriculture, the North Carolina department of agriculture, the North Carolina state board of health, or similar federal institutions or other official agencies of this state or other states when such agencies are authorized by law to conduct research in the field of economic poisons.

t. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

u. The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison —

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this article;

(c) if the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;

(e) if the label does not bear an ingredient or guaranteed analysis statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient or guaranteed analysis statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under the authority of this article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(g) if in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized safe practice, it shall be injurious to living man or other vertebrate animals or vegetation, to which it is applied, or to the person applying such economic poison, excepting pests and weeds. (1947, c. 1087, s. 2.)

§ 106-65.3. Prohibited acts.— a. It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(1) Any economic poison which is not registered pursuant to the provisions of § 106-65.5, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: Provided, that, in the discretion of the commissioner, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product: Provided further, that changes at no time are permissible if they lower the efficacy of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand, or trade mark under which said article is sold; and

(c) the net weight or measure of the con-

tent subject, however, to such reasonable variations as the board of agriculture may permit.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in § 106-65.6, unless the label shall bear, in addition to any other matter required by this article,

(a) the skull and crossbones;

(b) the word "poison" prominently, in red, on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this article, or any other white or lightly colored powder economic poison which the board of agriculture, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the board may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this subsection if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded, or any device which is misbranded.

b. It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this article or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from an economic poison in a manner that may defeat the purpose of this article;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this article;

(3) for any person to give a guaranty or undertaking provided for in § 106-65.8 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under § 106-65.8 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

(4) for any person to use for his own advantage or to reveal, other than to the commissioner, or officials or employees of the United States department of agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with

such directions as the commissioner may prescribe, any information relative to formulas of products acquired by authority of § 106-65.5; and

(5) for any person to oppose or interfere in any way with the commissioner or his duly authorized agents in carrying out the duties imposed by this article. (1947, c. 1087, s. 3.)

§ 106-65.4. Injunctions.—In addition to the remedies herein provided the commissioner of agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 106-65.3, irrespective of whether or not there exists an adequate remedy at law. (1947, c. 1087, s. 4.)

§ 106-65.5. Registration.—a. Every economic poison which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in interstate commerce or between points within this state shall be registered in the office of the commissioner, and such registrations shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels may, in the discretion of the commissioner, be added by supplement statements during the current period of registration. The registrant shall file with the commissioner a statement including—

(1) the name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it including directions for use; and

(4) if requested by the commissioner a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last reregistered.

b. The registrant, before selling or offering for sale any economic poison in this state, shall register each brand or grade of such economic poison with the department of agriculture upon forms furnished by the department, and, for purposes of defraying expenses connected with the enforcement of this article, shall pay to the department an annual inspection fee of ten (\$10.00) dollars for each and every brand or grade to be offered for sale in this state, whereupon there shall be issued to the registrant by the department of agriculture, a certificate entitling the registrant to sell all duly registered brands in this state until the expiration of the certificate. All certificates shall expire on December 31st of each year and are subject to renewal upon receipt of annual inspection fees.

c. The commissioner, whenever he deems it necessary in the administration of this article, may require the submission of the complete formula of any economic poison. If it appears to the commissioner that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this article, he shall register the article.

d. If it does not appear to the commissioner that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this article, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the article so as to afford the registrant an opportunity to make the necessary corrections.

e. The commissioner is authorized and empowered to refuse to register, or to cancel the registration of, any brand of economic poison as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this article or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the board of agriculture.

f. Notwithstanding any other provision of this article, registration is not required in the case of an economic poison shipped from one plant within this state to another plant within this state operated by the same person. (1947, c. 1087, s. 5.)

§ 106-65.6. Determination; rules and regulations; uniformity.—a. The commissioner is authorized, after opportunity for a hearing,

(1) to declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine whether economic poisons are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of paragraph (4), subsection a of § 106-65.3.

b. The commissioner is further authorized

(1) to effect the collection and examination of samples of economic poisons and devices to determine compliance with the requirements of this article; and he shall have the authority at all reasonable hours to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain economic poison, or devices, for the purpose of inspection or sampling, and to procure samples for analysis or examination from any lot, package or parcel of economic poison, or any device;

(2) to publish from time to time, in such forms as he may deem proper, complete information concerning the sale of economic poisons, together with such data on their production and use as he may consider advisable, and reports of the results of the analyses based on official samples of economic poisons sold within the state.

c. The board of agriculture is authorized to prescribe, after public hearing following due public notice, such rules, regulations, and standards re-

lating to the sale and distribution of economic poisons as they may find necessary to carry into effect the full intent and meaning of this article.

d. In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, the board of agriculture and the commissioner are authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, the United States department of agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this article and securing uniformity of regulations. (1947, c. 1087, s. 6.)

§ 106-65.7. Violations.—a. If it shall appear from the examination or evidence that any of the provisions of this article or the rules and regulations issued thereunder have been violated, the commissioner may cause notice of such violation to be given to the registrant, distributor, and possessor from whom said sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the board of agriculture. If it appears after such hearing that there has been a sufficient number of violations of this article or the rules and regulations issued thereunder, the commissioner may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the analyst or other officer making the examination under the oath of such officer. It shall be the duty of every solicitor to whom the commissioner shall report any violation of this article to cause proceedings to be prosecuted without delay for the fines and penalties in such cases. Any person convicted of violating any provisions of this article or the rules and regulations issued thereunder shall be adjudged guilty of a misdemeanor and shall be punished in the discretion of the court.

b. Nothing in this article shall be construed as requiring the commissioner to report for the institution of proceedings under this article, minor violations of this article, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1947, c. 1087, s. 7.)

§ 106-65.8. Exemptions.—a. The penalties provided for violations of subsection a of § 106-65.3 shall not apply to—

(1) any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier shall, upon request, permit the commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

(2) public officials of this state and the federal government engaged in the performance of their official duties;

(3) the manufacturer or shipper of an economic poison for experimental use only

(a) by or under the supervision of an agency of this state or of the federal government

authorized by law to conduct research in the field of economic poisons; or

(b) by others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only —Not to be sold", together with the manufacturer's name and address: Provided, however, that if a written permit has been obtained from the commissioner, economic poisons may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit;

(4) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this article, designating this article. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this article. (1947, c. 1087, s. 8.)

§ 106-65.9. Short weight.—If any economic poison in the possession of consumers is found by the commissioner to be short in weight, the registrant of said economic poison shall within thirty days after official notice from the commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. (1947, c. 1087, s. 9.)

§ 106-65.10. "Stop sale" orders.—It shall be the duty of the commissioner to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of economic poison and to hold at a designated place when the commissioner finds said economic poison is being offered or exposed for sale in violation of any of the provisions of this article until the law has been complied with and said economic poison is released in writing by the commissioner or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the economic poison so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1087, s. 10.)

§ 106-65.11. Seizures, condemnation and sale.—Any lot of economic poison not in compliance with the provisions of this article shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said economic poison is located. In the event the court finds the said economic poison to be in violation of this article and orders the condemnation of said economic poison, it shall be disposed of in any manner consistent with the quality of the economic poison and the laws of the state: Provided, that in no instance shall the disposition of said economic poison be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said economic poison or for permission to process or relabel said product to bring it into compliance with this article. (1947, c. 1087, s. 11.)

§ 106-65.12. **Delegation of duties.**— All authority vested in the commissioner by virtue of the provisions of this article may with like force and effect be executed by such employees of the department of agriculture as the commissioner may from time to time designate for said purpose. (1947, c. 1087, s. 12.)

Art. 8. Sale, etc., of Agricultural Liming Material, etc.

§ 106-84. **Registration and tonnage fees; tags showing payment; reporting system; license certificates.**

(c) Each bag, parcel, or shipment of said materials shall have attached thereto a tag, or label, to be furnished by the department of agriculture, stating that all charges specified in this article have been paid, and the commissioner of agriculture, with the advice and consent of the board of agriculture is hereby empowered to prescribe a form for such tags, or labels, and to adopt such regulations as will insure enforcement of this article. Whenever any manufacturer or vendor shall have paid the required charges, his goods shall not be liable to any further tax, whether by city, town or county. Tax tags or labels shall be issued each year by the commissioner of agriculture, and sold to persons applying for same at the tax rate provided herein. Tags or labels left in the possession of persons registering the materials coming under this article, at the end of a calendar year, may be exchanged for tags or labels for the next succeeding year.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this article in this state may make application for a permit to report the materials sold and pay the tonnage fees as set forth in subsection (b) of this section, as the basis of said report, in lieu of affixing inspection tags or labels. The commissioner of agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the commissioner that he has a good book-keeping system and keeps such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the state and as are satisfactory to the commissioner of agriculture, and granting the commissioner, or his duly authorized representative, permission to examine such records and verify the statement. The report shall be quarterly and the tonnage fees shall be due and payable quarterly, on or before the tenth day of January, April, July, and October of each year, covering the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be under oath and on forms furnished by the commissioner. If the report is not filed and the tonnage fees paid by the tenth day following the date due or if the report be false, the commissioner may revoke the permit, and if the tonnage fees be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent which shall be added to the tonnage fees due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with

the commission cash in the amount of two hundred fifty dollars (\$250) or securities acceptable to the commissioner of a value of at least two hundred fifty dollars (\$250) or shall post with the commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The commissioner shall approve all such securities and bonds before acceptance. (1949, c. 828.)

Editor's Note.—The 1949 amendment added the second paragraph of subsection (c). As the other subsections were not affected by the amendment they are not set out.

Art. 9. Commercial Feeding Stuffs.

§ 106-93. **Packages to be marked with statement of specified particulars; methods of analysis.**

—Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this state shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the weight of the package; the name, brand, or trade-mark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates: Provided, that minerals and other materials not valuable for their protein and fat content shall be labeled in accordance with rules and regulations promulgated by the state board of agriculture. The methods of analysis shall be those adopted as official by the board of agriculture and shall conform to the methods prescribed by the Association of Official Agricultural Chemists. In the absence of methods prescribed by said association, the commissioner shall prescribe the methods of analysis. (1909, c. 149, s. 1; 1949, c. 638, s. 1; C. S. 4724.)

Editor's Note.—The 1949 amendment struck out the latter part of the former section and inserted in lieu thereof the proviso and the last two sentences.

§ 106-95. **Concentrated commercial feeding stuffs defined.**—The term "commercial feeding stuffs" shall be held to include the so-called mineral feeds and all feeds used for livestock, domestic animals and poultry, except cottonseed hulls, whole unground hays, straws and corn stover, when the same are not mixed with other materials, nor shall it apply to whole unmixed, unground and uncrushed grains or seeds when not mixed with other materials. (1909, c. 149, s. 2; 1939, c. 354, s. 1; 1949, c. 638, s. 2; C. S. 4726.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 106-99. **Inspection tax on feeding stuffs; tax tags; reporting system.**

Any manufacturer, importer, jobber, firm, corporation or person who distributes concentrated commercial feeding stuffs in this state may make application to the commissioner of agriculture for a permit to report the tonnage of feeding stuffs sold and pay the inspection tax of twenty-five cents (25c) per ton as hereinbefore mentioned, as the basis of said report, in lieu of affixing or furnishing inspection fee tags or stamps. The commissioner of agriculture may, in his discretion,

grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of feeding stuffs sold in the state and as are satisfactory to the commissioner of agriculture, and granting the commissioner, or his duly authorized representative, permission to examine such records and verify the tonnage statement. The tonnage report shall be monthly and the inspection fee shall be due and payable monthly, on the tenth of each month, covering the tonnage and kind of commercial feeding stuffs sold during the past month. The report shall be under oath and on forms furnished by the commissioner. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the commissioner may revoke the permit, and if the inspection fee be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the commissioner cash in the amount of one thousand dollars (\$1000.00) or securities acceptable to the commissioner of a value of at least one thousand dollars (\$1000.00) or shall post with the commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The commissioner shall approve all such securities and bonds before acceptance. (1909, c. 149, s. 6; 1939, c. 286; 1949, c. 638, s. 3; C. S. 4730.)

Editor's Note.—The 1949 amendment added the above paragraph relating to reporting system at the end of this section. As the rest of the section was not changed by the amendment it is not set out.

Art. 12. Food, Drugs and Cosmetics.

§ 106-134. Drugs deemed misbranded.

(k) If (1) it is a drug sold at retail and contains any quantity of amidopyrine, barbituric acid, cinchophen, dinitrophenol, sulfanilamide, pituitary, thyroid, or their derivatives, or (2) it is a drug or device sold at retail and its label bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian; unless it is sold on a written prescription signed by a member of the medical, dental, or veterinary profession who is licensed by law to administer such drug or device, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. Such prescription shall not be refilled except on the specific authorization of the prescribing physician, dentist or veterinarian.

Nothing in this subsection shall apply to a compound, mixture, or preparation containing salts or derivatives of barbituric acid which is sold in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this subsection if

(1) Such compound, mixture, or preparation contains a sufficient quantity of another drug or drugs, in addition to such salts or derivatives, to cause it to produce an action other than its hypnotic or somnifacient action; or

(2) Such compound, mixture, or preparation is intended for use as a spray or gargle or for external application and contains, in addition to such salts or derivatives, some other drug or drugs rendering it unfit for internal administration.

(1949, c. 370.)

Editor's Note.—The 1949 amendment rewrote subsection (k). As the rest of the section was not affected by the amendment it is not set out.

Art. 13. Canned Dog Foods.

§ 106-150. Annual registration fee; inspection tax; stamps; reporting system.—Upon registration of each brand or kind of dog food, the manufacturer, agent or distributor thereof shall pay to the commissioner of agriculture an annual registration fee of five dollars (\$5.00) payable at the time of registration, and thereafter on or before the last day of December of each year. Furthermore, each such manufacturer, agent or distributor shall pay to the commissioner of agriculture an inspection tax at the rate of two cents for each carton of forty-eight cans and shall affix to each such carton a stamp to be furnished by the commissioner of agriculture stating that all charges specified in this section have been paid. Said stamps shall be redeemed by the department issuing said stamps, upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, said stamps shall be returned for redemption within the time fixed by the board of agriculture.

Any manufacturer, importer, jobber, firm, corporation or person who distributes canned dog food in this state may make application for a permit to report the quantity of canned dog food sold and pay the inspection tax at the rate of two (2) cents for each carton of forty-eight cans as hereinbefore mentioned, as the basis of said report, in lieu of affixing inspection stamps. The commissioner of agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the quantity of canned dog food sold in the state and as are satisfactory to the commissioner of agriculture, and granting the commissioner, or his duly authorized representative, permission to examine such records and verify the statement. The report shall be quarterly and the inspection fee shall be due and payable quarterly, on or before the tenth day of January, April, July, and October of each year, covering the quantity of canned dog food sold during the preceding quarter. The report shall be under oath and on forms furnished by the commissioner. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report be false, the commissioner may revoke the permit, and if the inspection fee be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment

against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the commissioner cash in the amount of two hundred fifty dollars (\$250) or securities acceptable to the commissioner of a value of at least two hundred fifty dollars (\$250) or shall post with the commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The commissioner shall approve all such securities and bonds before acceptance. (1939, c. 307, s. 5; 1949, c. 1058, ss. 1, 2.)

Editor's Note.—The 1949 amendment substituted "December" for "June" in the first sentence of the first paragraph, and added the second paragraph.

Art. 14. State Inspection of Slaughterhouses.

§ 106-168. Local: Sales of calves for veal.

Local Modification.—The reference to Buncombe: Public-Local 1919, c. 191, and to Transylvania: Public-Local 1919, c. 191, should be deleted. Public-Local 1919, c. 191, was repealed by Public-Local 1919, c. 593.

Art. 15A. Meat Grading Law.

§ 106-173.1. Short title.—The short title of this article shall be "The North Carolina Meat Grading Law." (1951, c. 1030, s. 1.)

§ 106-173.2. Definitions.—For the purpose of this article, the following words, names and terms shall be construed respectively as follows:

(a) "Plant" means any person, firm or corporation engaged in slaughtering, packing or processing meat.

(b) "Distributor" means any person, firm or corporation engaged in selling, handling or distributing meat.

(c) "Plant or distributor's permit" means authority granted by the Commissioner to produce, handle, sell or distribute meat which is graded according to the provisions of this article.

(d) "Grader's permit" means authority granted by the Commissioner to any person to grade meat in any plant or for any distributor holding a plant or distributor's permit.

(e) "Grader" means any person holding a grader's permit.

(f) "Meat" means beef, lamb or pork.

(g) "Commissioner" means Commissioner of Agriculture of North Carolina. (1951, c. 1030, s. 2.)

§ 106-173.3. Program inaugurated.—The Department of Agriculture shall inaugurate and conduct a program for the grading of meat which is slaughtered, processed or distributed in this State. (1951, c. 1030, s. 3.)

§ 106-173.4. Program shall be voluntary.—No plant or distributor is required to participate in this program, but any plant or distributor may participate so long as said plant or distributor meets the requirements for a permit as provided by this article and continues to comply with those and other requirements which may be promulgated by the Board of Agriculture. (1951, c. 1030, s. 4.)

§ 106-173.5. Issuance of plant or distributor's permits.—(a) Any plant which produces satisfactory evidence to the Commissioner that it holds a grade-A health rating by the North Carolina De-

partment of Public Health, both as to its plant proper and surrounding premises, and that it has the facilities to provide for both ante and post-mortem inspection of meat by a veterinarian or some other person acting under the supervision of a veterinarian, shall, upon application to the Commissioner, and the payment of a fee of one dollar (\$1.00), be issued a plant or distributor's permit to grade meat as provided by this article.

(b) Any distributor who produces satisfactory evidence to the Commissioner that the meat which is handled by him is slaughtered, processed or produced under conditions which would satisfy the requirements set out in subsection (a) of this section shall, upon the payment of one dollar (\$1.00), be issued a plant or distributor's permit to grade meat as provided by this article. (1951, c. 1030, s. 5.)

§ 106-173.6. Revocation of plant or distributor's permit.—Any plant or distributor's permit may be revoked or suspended by the Commissioner if the holder of such permit fails to continue to comply with the requirements for obtaining such permit, or any other rules, regulations and standards of the Department of Agriculture or any law of this State relating to the handling of meat, but no permit shall be revoked without due notice to the holder thereof and an opportunity for the holder to be heard. (1951, c. 1030, s. 6.)

§ 106-173.7. Grader's permits.—A grader's permit, subject to the provisions of this article shall be issued by the commissioner when sufficient proof is presented to him to satisfy him that the person applying for such permit is of good moral character and has had sufficient training and experience to qualify him to grade meat, and when such applicant has paid to the Department of Agriculture the sum of one dollar (\$1.00). (1951, c. 1030, s. 7.)

§ 106-173.8. Revocation of grader's permit.—Any grader's permit shall be revoked or suspended when it shall appear to the Commissioner that the holder of such permit has violated any rule, regulation or standard of the Department of Agriculture or any law of North Carolina relating to the handling of meat, but no permit shall be revoked without proper notice to the holder thereof and an opportunity for him to be heard. (1951, c. 1030, s. 8.)

§ 106-173.9. Supervision of program.—The Department of Agriculture, upon receiving a request from a plant holding a plant permit, shall inaugurate and supervise a grading program for said plant. (1951, c. 1030, s. 9.)

§ 106-173.10. Grades.—Each plant or distributor holding a plant or distributor's permit and participating in a meat grading program authorized by this article shall cause all graded meat handled by it to be classified in the following grades: "prime", "choice", "good", "commercial", "cutter", "utility" and "canner". These designations may be made only by a person holding a grader's permit and the standards of quality which are required to make up these grades shall be the same as those used by the federal meat grading agency to classify meats in these same grades. (1951, c. 1030, s. 10.)

§ 106-173.11. All meat to be stamped.—Each plant or distributor holding a plant or distributor's permit shall, after a grader has determined the grade of any piece of meat handled by said plant or distributor, cause to be stamped on that piece of meat the grade name, the letters "N.C.D.A." and a letter, number or symbol to be assigned by the Department of Agriculture in order to identify the plant or distributor handling that piece of meat. (1951, c. 1030, s. 11.)

§ 106-173.12. Roller stamps to be rented.—Each plant or distributor holding a plant or distributor's permit shall obtain from the North Carolina Department of Agriculture one or more sets of roller stamps and shall pay a rental fee not in excess of the amount required to procure and supply these stamps. These roller stamps shall remain the property of the Department of Agriculture and shall be returned to the Department of Agriculture upon the suspension or revocation of the plant or distributor's permit or upon the request of the Commissioner. (1951, c. 1030, s. 12.)

§ 106-173.13. Roller stamps, contents of.—These roller stamps shall contain the letters "N.C.D.A." and a number, letter or other symbol to identify the plant or distributor using said stamp. The stamps shall also contain the words "prime", "choice", "good", "commercial", "utility", "cutter" and "canner" respectively. (1951, c. 1030, s. 13.)

§ 106-173.14. Reports by plants or distributors.—Plants or distributors holding meat grading permits shall make reports regarding the number of animals slaughtered, number of animals graded, the grades within which these animals were classified and the origin of these animals, and such other information as the Commissioner may deem proper. These reports shall be filed when requested by the Commissioner and on the forms to be supplied by him. (1951, c. 1030, s. 14.)

§ 106-173.15. Fees.—The Commissioner is authorized to establish a uniform system of fees to be charged by the Department of Agriculture and these fees shall be charged for services performed in the administration of this article. (1951, c. 1030, s. 15.)

§ 106-173.16. Rules and regulations; violation of article or regulations a misdemeanor.—The Board of Agriculture is authorized, after public hearing following due public notice, to promulgate such rules, regulations, definitions and standards as may be necessary to carry out the provisions of this article. The violation of any of the provisions of this article, or any of the rules and regulations promulgated hereunder, shall constitute a misdemeanor and shall be punished in the discretion of the court. (1951, c. 1030, s. 16.)

Art. 17. Marketing and Branding Farm Products.

§ 106-189. Sale and receptacles of standardized products must conform to requirements.

Editor's Note.—

For comment on the 1943 amendment, see 21 N. C. Law Rev. 329.

Art. 20. Standard Weight of Flour and Meal.

§§ 106-203 to 106-209: Repealed by Session Laws 1945, c. 280, s. 2.

Art. 21A. Enrichment of Flour, Bread and Corn Meal.

§ 106-219.1. Title of article.—This article may be cited as: "The North Carolina Flour, Bread, and Corn Meal Enrichment Act." (1945, c. 641, s. 1.)

Editor's Note.—The act from which this article was codified became effective June 30, 1945.

For comment on the act, see 23 N. C. Law Rev. 344.

§ 106-219.2. Definitions.—For the purpose of this article—

(1) "Commissioner" means commissioner of agriculture; "board" means the board of agriculture.

(2) "Person" includes individual, partnership, corporation, and association.

(3) "Flour" (white flour) means the fine-grained product obtained from the milling of wheat, with or without leavening, bleaching, or other agents for similar purposes. The adjectives "whole wheat" means the variety with no part of the wheat berry removed; "white" means the bolted or refined type with parts of the wheat berry removed; but the term "flour" shall not include flours such as specialty cake, pancake and pastry flours which are not used for bread, roll, bun or biscuit making.

(4) "White bread" means bread made of "white flour," also rolls and biscuits of the bread-dough type; but shall not include the extensively sweetened, iced or cake type of product.

(5) "Degerminated" applied to corn meal or grits means said products with more than ten per cent (10%) of the germ removed.

(6) "Enriched" means restored or brought up to content of vitamins and minerals as prescribed in this article.

(7) "North Carolina Food, Drug and Cosmetic Act" refers to article twelve of this chapter. (1945, c. 641, s. 2.)

§ 106-219.3. Required vitamins and minerals.—On and after the effective date of this article, it shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale in this state any products covered herein which do not contain the vitamins and minerals as prescribed in the following formulae:

(a) White flour, degerminated corn meal, and degerminated hominy grits shall contain in each pound not less than two (2.0) and not more than two and five tenths (2.5) milligrams of vitamin B (thiamin); not less than one and two tenths (1.2) and not more than one and five tenths (1.5) milligrams of riboflavin; not less than sixteen (16.0) and not more than twenty (20.0) milligrams of niacin (nicotinic acid); not less than thirteen (13.0) and not more than sixteen and five tenths (16.5) milligrams of iron; except that self-rising flour shall contain, in addition to the above ingredients, not less than five hundred (500) and not more than one thousand five hundred (1500) milligrams of calcium.

(b) White bread shall contain in each pound not less than one and one tenth (1.1) and not more than one and eight tenths (1.8) milligrams of vitamin B (thiamin); not less than seven tenths (0.7) and not more than one and six (1.6) milligrams of riboflavin; not less than ten (10.0) and not more than fifteen (15.0) milli-

grams of niacin (nicotinic acid); not less than eight (8.0) and not more than twelve and five tenths (12.5) milligrams of iron.

(c) Enrichment may be accomplished by the addition of vitamins from a natural or synthetic source, or other harmless and assimilable enriching ingredients which will accomplish the purpose of this article and will be acceptable under the North Carolina Food, Drug and Cosmetic Act.

(d) The enriching ingredients required under subsections (a) and (b) of this section may be added in a harmless carrier which does not impair the enriched products; provided, (1) that such carrier is used only in quantity necessary to effect uniform mixture in the finished products; (2) that the concentration of enriching ingredients does not differ more than fifteen per cent (15%) between top and bottom of containers following subjection to normal handling and transportation; and, (3) that enriched grits be so stabilized that loss of vitamins and minerals from customary rinsing before cooking shall not exceed ten per cent (10%). (1945, c. 641, s. 3.)

§ 106-219.4. Products exempted.—The terms of this article shall not apply:

(a) To white flour, degerminated grits or degerminated corn meal sold to bakers or other commercial secondary processors; provided, the purchaser furnishes to the seller an approved certificate of intent to use said flour, grits or corn meal solely in the production of the products covered in this article; or in the manufacture of legitimate products not covered by the provisions of this article.

(b) To whole wheat flour or bread made from the entire wheat berry, or meal or grits made from the entire corn grain; provided, that (1) flour or bread made from the whole wheat berry, or various portions thereof, mixed with white flour shall contain vitamins and minerals equal to that required for the respective enriched products as defined in § 106-219.3 (a) and (b); (2) that this subsection shall not be construed to prohibit the further enrichment of whole grain products when done so as to comply with standards and labeling requirements under the North Carolina Food, Drug and Cosmetic Act.

(c) To products ground for the producer's use from the producer's grain; provided, that such products shall become subject to this article when offered for sale. (1945, c. 641, s. 4.)

§ 106-219.5. Enforcement by commissioner.—

(a) The provisions of this article shall be enforced by the commissioner of agriculture, who is hereby directed, and he or his duly authorized agents shall have the authority to conduct examinations and investigations and, for the purpose of inspection and collection of samples for analysis, to enter, during business hours, all mills, storages, or other establishments or vehicles where products covered in this article are, or upon reasonable grounds are believed to be processed, contained, transported or sold.

(b) In the event that there be shortage or imminence of shortage of enriching ingredients required under § 106-219.3 (a) and (b), the commissioner shall obtain the facts from all proper and authorized sources or from testimony pro-

duced at public hearing and if findings show that the distribution of a food may be substantially impeded by enforcement, he shall immediately order suspension of such requirements as threaten distribution; provided, such suspension shall be revoked as soon as supplies of enriching ingredients are again available. (1945, c. 641, s. 5.)

§ 106-219.6. Board authorized to make regulations; hearing.—The authority for promulgating regulations for the efficient enforcement of this article, and for bringing into force the provisions under § 106-219.3 (c) is hereby vested in the board of agriculture, and the board is hereby authorized to make standards hereunder conform insofar as practicable, with interstate standards. Actions under 'this section shall follow proper public notice and hearing. (1945, c. 641, s. 6.)

§ 106-219.7. Violation a misdemeanor.—Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine for each offense of not more than one hundred dollars (\$100.00) or to imprisonment of not more than thirty days, or to both such fine and imprisonment. (1945, c. 641, s. 7.)

§ 106-219.8. Application of article 12.—All of the provisions of article twelve of this chapter, said article being entitled: "Food, Drugs and Cosmetics," as far as the same are pertinent shall be applicable to the foods, ingredients and substances defined in this article, and all of the remedies contained in said article twelve are hereby made available to the commissioner, and to the commissioner and the board, for the enforcement of this article. (1945, c. 641, s. 8.)

§ 106-219.9. Mills grinding whole grain exempted.—Nothing in this article shall apply to mills operated by water or other power grinding whole grain of corn or whole wheat flour. (1945, c. 641, s. 9½.)

Art. 22. Inspection of Bakeries.

§ 106-225.1. Bakery products containing souvenirs, trinkets, etc., which may endanger consumers.—No bread or other bakery product shall contain or have in direct contact with it trinkets, metal objects, money, pictures, cardboard cut-outs, balloons or other objects or materials, by way of souvenirs, premiums or otherwise, which may endanger consumers by contamination arising from insanitation, from contact with printing inks, paints or other coatings, materials or substances which are not suitable for contact with food or which may in any way expose consumers to danger of injury because of biting into or swallowing such materials or objects: Except, that these provisions shall not be interpreted to prohibit the safe and proper use of such items as cake supports, decorations and trimmings or the placing of such objects as dishes and spoons in unfinished foods when this is done in a manner which in no way endangers consumers. (1949, c. 985.)

§ 106-225.2. New bags or other new containers required for grain cereal products.—No person, firm, association, or corporation, and no flour, corn or other cereal mill, or the owner or operator of same, and no bakery or food processing estab-

lishment, or the owner or operator of same, shall do, or suffer or permit to be done, any of the following acts:

(a) Sell or offer for sale any flour, corn meal, or other grain cereal product for human consumption which has been packed in bags or containers that have been previously used for any purpose, or

(b) Use any except new bags or other new containers for the packing of flour, corn meal or other grain cereal products for human consumption, or

(c) Import, ship, or cause to be shipped into the state of North Carolina any flour, corn meal or other grain cereal product for human consumption unless such products are packed in new bags or other new containers which have not been previously used, or

(d) Use in foods for human consumption any flour, corn meal or other grain cereal product which has been packed in used bags or in other containers which have been previously used. (1949, c. 985.)

Art. 23. Oleomargarine.

§ 106-233. Definitions.

As used in this article, the term "oleomargarine" shall be deemed applicable to the food product known as margarine and any requirement herein contained for labeling or display of the word "oleomargarine" shall be deemed sufficiently complied with by the use of the word "margarine." (1931, c. 229, s. 1; 1949, c. 978, s. 1.)

Editor's Note.—The 1949 amendment directed that the above sentence be added to subsection (c). As the rest of the section was not changed only this sentence is set out.

§ 106-234: Repealed by Session Laws 1949, c. 978, s. 2.

§ 106-235. License to sell oleomargarine.

Every person desiring to manufacture, sell, or offer or expose for sale, or have in possession with intent to sell oleomargarine, shall make application for a license to do so in such form as prescribed by the state commissioner of agriculture, but this provision shall not apply to any person engaged in the retail sale of oleomargarine.

If the said application is satisfactory to the state commissioner of agriculture, there shall be issued to the applicant a license authorizing him to engage in the manufacture or sale of oleomargarine, for which said license the applicant shall pay: If a wholesaler or distributor, the sum of twenty-five dollars (\$25.00) annually for each separate plant or establishment operated or maintained in this state by such wholesaler or distributor. The said license fees shall be collected by the state department of agriculture, and covered into the state treasury as a part of the agricultural fund.

All licenses shall expire on the thirty-first day of December of each year. (1931, c. 229, s. 3; 1939, c. 282, ss. 1, 2; 1945, c. 523, s. 2; 1949, c. 978, s. 3.)

Editor's Note.—

The 1945 amendment struck out the words "not made or colored so as to look like butter" formerly appearing after the word "oleomargarine" in line three of the first paragraph. It also struck out the words "which shall not contain any color or ingredient that causes it to resemble yellow butter" formerly appearing after the word "oleomargarine" in line five of the second paragraph, as well as other provisions relating to colored oleomargarine.

The 1949 amendment substituted "twenty-five dollars" for "seventy-five dollars" in line seven of the second paragraph.

§ 106-236. Display of signs.—(a) Marking Containers.—It shall be unlawful for any person or any agent thereof to sell or offer, or expose for sale, or have in possession with intent to sell, any oleomargarine which is not marked and distinguished by the word oleomargarine on the outside of each tub, package, or parcel.

(b) Notice in Public Eating Places.—No person shall possess in a form ready for serving yellow oleomargarine at a public eating place unless a notice that oleomargarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than normally used to designate the serving of other food items; and no person shall serve yellow oleomargarine at a public eating place, whether or not any charge is made therefor, unless each separate serving bears or is accompanied by labeling identifying it as oleomargarine. (1931, c. 229, s. 4; 1939, c. 282, s. 3; 1945, c. 523, s. 3; 1949, c. 978, s. 4.)

Editor's Note.—

The 1945 amendment struck out the words "not in imitation of yellow butter" formerly appearing after the word "oleomargarine" in line four.

The 1949 amendment rewrote this section.

Art. 26. Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-246. Cleanliness and sanitation enjoined; wash rooms and toilets, living and sleeping rooms; animals.

Editor's Note.—Session Laws 1945, c. 739, struck out Public Laws 1933, c. 431, s. 5, and amended Public Laws 1939, c. 294, so as to make this section fully applicable to Burke, Cabarrus, Catawba and Mecklenburg counties.

§ 106-253. Standards of purity and sanitation; regulating trade or brand names of frozen desserts.—The board of agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this article, as shall be necessary to make provisions of this article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. It shall be unlawful for any person, firm or corporation to use the words "cream," "milk," or "ice cream," or either of them, or any similar sounding word or terms, as a part of or in connection with any product, trade name or brand of any frozen dessert manufactured, sold or offered for sale and not in fact made from dairy products under and in accordance with regulations, definitions or standards approved or promulgated by the board of agriculture. (1921, c. 169, s. 8; 1933, c. 431, s. 3; 1945, c. 846; C. S. 7251(h).)

Editor's Note.—

The 1945 amendment added the second sentence.

Art. 28. Records and Reports of Milk Distributors and Processors.

§ 106-260. "Milk" defined.—Wherever the word "milk" appears hereinafter in this article, it shall

be construed to include all whole milk, cream, chocolate milk, buttermilk, skim milk, special milk and all flavored milk, including flavored drinks, skim condensed, whole condensed, dry milks and evaporated. (1941, c. 162, s. 1; 1951, c. 1133, s. 1.)

Editor's Note.—The 1951 amendment inserted the words "including flavored drinks, skim condensed, whole condensed, dry milk and evaporated" at the end of the section.

§ 106-261. Reports to Commissioner of Agriculture as to milk purchased and sold.—Every person, firm or corporation that purchases milk for processing or distribution or sale, or that purchases milk for processing and distribution and sale, in North Carolina shall, not later than the twentieth of each month following the month such business is carried on, furnish information to the Commissioner of Agriculture, upon blanks to be furnished by him which will show a detailed statement of the quantities of the various classifications of milk purchased and the class in which this milk was distributed or sold. Such report shall include all milk purchased from producers and other sources, imported, all milk sold to consumers, sold or transferred between plants, distributors, affiliates and subsidiaries, and all milk used in the manufacture of other dairy products; provided, however, that every person, firm or corporation engaged in purchasing milk and/or dairy products as defined in § 106-260, for processing and manufacturing purposes only and who is not engaged in distributing and/or selling milk or milk products in fluid form, shall be required to report only the receipts of such milk or milk products and the quantities of dairy products manufactured. Provided, further, that the provisions of this section shall not apply to retail stores unless the same are owned, controlled or operated by milk processors and/or distributors. (1947, c. 162, s. 2; 1951, c. 1133, s. 2.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 106-262. Powers of Commissioner of Agriculture.—The Commissioner of Agriculture is hereby authorized and empowered:

(a) To require such reports as will enable him to determine the quantities of milk purchased and the classification in which it was used or disposed;

(b) To designate any area of the State as a natural marketing area for the sale or use of milk or milk products;

(c) To set up classifications for the sale or use of milk or milk products for each marketing area after full, complete and impartial hearing. Due notice of such hearing shall be given.

(d) To make rules and regulations and issue orders necessary to carry out and enforce the provisions of this article, including the supervision of producer bases and other production incentive plans; methods of uniform and equitable payments to all producers selling milk to the same firm, person or corporation; uniform methods of computing weights of milk and/or milk products; and maximum handling and transportation charges for milk sold and/or transferred between plants. (1941, c. 162, s. 3; 1951, c. 1133, s. 3.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 106-266. Violation made misdemeanor.—Any person, firm, or corporation violating any of the provisions of this article and/or any rule, regu-

lation or order promulgated in accordance with the provisions of this article shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000.00), or be imprisoned for not more than one year, or both fined and imprisoned in the discretion of the court. (1941, c. 162, s. 7; 1951, c. 1133, s. 4.)

Editor's Note.—The 1951 amendment inserted the words "and/or any rule, regulation or order promulgated in accordance with provisions of this article".

Art. 28A. Regulation of Milk Brought into North Carolina from Other States.

§ 106-266.1. Requirements to be complied with by out-of-state shippers of milk or cream.—No person, firm, association or corporation shall ship, transport, carry, send or bring into this state any milk or cream for fluid distribution without first having applied for and obtained from the commissioner of agriculture of this state a permit authorizing such transaction, shipment or transportation. In order to defray the expenses of the enforcement of this article, the commissioner of agriculture shall collect a fee of twenty-five dollars (\$25.00) for the issuance of such permit. The board of agriculture is authorized and empowered to establish, determine, fix and promulgate rules and regulations containing all necessary definitions, conditions, standards and classifications of the type, kind, quality, conditions of production, sanitary conditions and other reasonable requirements that must be complied with before milk or cream is shipped, transported, carried or brought into this state, including compliance with the Milk Audit Law of this state. Before any person, firm, association or corporation ships, transports, brings, sends or carries any milk or cream into this state, advance notice of such shipment or transportation shall be given to the commissioner of agriculture of this state and contain such information as the board of agriculture shall prescribe by rules and regulations. The commissioner of agriculture is authorized to suspend, immediately upon notice to a permit holder, any permit issued under authority of this section if it is found by him that any of the conditions of the permit or any of the rules, regulations and laws have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the commissioner of agriculture shall, immediately after prompt hearing and such other examinations or inspections as he deems proper, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. Any permit issued by the commissioner of agriculture under the authority of this section may be revoked after an opportunity for a hearing by the commissioner of agriculture, upon the violation by the holder of the permit of any of the terms, conditions, rules and regulations issued and promulgated by authority of this section. All milk or cream shipped, transported, carried, sent or brought into this state shall be sold to, consigned to, delivered to, be transported, sent or carried only to a person, firm, association or corporation or to a milk distributor in this state holding or possessing an unrevoked permit from the commissioner of agriculture authorizing the receiving or

importation of such milk or cream. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31st of each year.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the state the commissioner of agriculture may issue to approved permit holders, or to non-permit holders, temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area in accordance with such regulations as the commissioner of agriculture may prescribe for each temporary permit. (1949, c. 822.)

Editor's Note.—The second "of" in line forty-seven appears as "or" in the act inserting this section.

§ 106-266.2. Requirements and standards for distributors in this state distributing imported milk or cream.—No person, firm, association or corporation shall import, transport into, receive, bring into or cause to be imported or to be sent into this state from another state for the purpose of sale, for the purpose of offering for sale, for the purpose of distribution any milk or cream unless such person, firm, association or corporation has obtained a permit from the commissioner of agriculture for such purpose. All permits issued under the authority of this section shall be issued after the payment of a fee of twenty-five dollars (\$25.00) to the commissioner of agriculture. The permits issued hereunder shall be conditioned upon compliance by the applicant or holder with the rules and regulations and laws of North Carolina governing milk or cream and such other definitions and standards as may be established and promulgated by the board of agriculture. The commissioner of agriculture is authorized to suspend, immediately upon due notice, any permit issued under authority of this section if it is found by the commissioner that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the commissioner of agriculture shall, immediately after prompt hearing, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued, or as amended. The permits issued hereunder may be revoked after due notice and an opportunity for hearing by the commissioner of agriculture upon a finding at such hearing of any violation of any of the conditions, terms or requirements established and promulgated by the board of agriculture or of any of the laws of the state governing milk or cream, including but not by way of limitation, the Milk Audit Law and other dairy laws of the state. It shall be the duty of the commissioner of agriculture to issue and enforce a written or printed "Stop sale, use or removal" order to the owner or custodian of any quantity of milk or cream imported, transported, or brought into this state and to hold the same at a designated place when the commissioner of agriculture finds that said milk or cream does not meet the requirements of the provisions of this article or the rules and regulations promulgated thereunder, until the law has been complied with and said milk or cream is released in writing by the commissioner of agriculture or said violation has been otherwise legally disposed of by written authority or by written order by the commissioner

of agriculture directing the owner or custodian to remove the milk or cream from the state. The commissioner of agriculture shall release the milk or cream so withdrawn from sale when the requirements of the provisions of this article and the rules and regulations promulgated thereunder have been complied with and upon payment by the out-of-state shipper of all costs and expenses incurred in connection with the withdrawal. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31st of each year. All authority vested in the commissioner of agriculture by virtue of the provisions of this article may, with like force and effect, be executed by such employees and agents of the commissioner of agriculture as may, from time to time, be designated by him for such purpose. The commissioner of agriculture or his duly authorized agent shall have free access at all reasonable hours to any dairy, milk processing plant, distributing plant or any establishment, depot, tank, truck or vehicle which contains milk for the purpose of inspecting any milk or cream, containers, or any other establishment or device pertaining to the transportation, the distribution, bottling or storage of milk or cream for the purpose of determining whether any of the provisions of this article or of the rules and regulations promulgated thereunder have been violated, and the commissioner of agriculture may secure samples of specimens of any such milk or cream after paying or offering to pay for such sample.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the state the commissioner of agriculture may issue to permit holders, or non-permit holders upon payment of a permit fee of twenty-five dollars (\$25.00), temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area or to a particular city or to a particular market or markets in accordance with such regulations as the commissioner of agriculture may prescribe for each temporary permit. (1949, c. 822.)

§ 106-266.3. Power to make rules and regulations.—The board of agriculture is authorized to make such regulations not in conflict with this article as shall be necessary to make the provisions of this article effective and insure the proper enforcement of same, and a violation of such regulations shall be deemed a violation of this article. (1949, c. 822.)

§ 106-266.4. Penalty for violation.—Any person, firm, association or corporation found guilty by a competent court of violating any of the provisions of this article shall be guilty of a misdemeanor and upon plea of guilty or conviction shall be fined not to exceed fifty dollars (\$50.00) for the first offense and for each subsequent offense shall be fined or imprisoned in the discretion of the court. (1949, c. 822.)

§ 106-266.5. Exemption clause.—The provisions of this article shall not be construed as extending to or applying to evaporated milk, powdered whole milk, powdered skimmed milk, or cream used for manufacturing purposes. Out-of-state dairy farms producing milk for North Carolina plants under a permit from, and in accordance with the local health regulations of the county or city to which milk is being delivered, may be exempted from

the provisions of this article at the discretion of the commissioner of agriculture. (1949, c. 822.)

Art. 29. Inspection, Grading and Testing Milk and Dairy Products.

§ 106-267. Inspection, grading and testing milk products.—The State Board of Agriculture shall have full power to make and promulgate rules and regulations for the Department of Agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this State; to regulate the manner of testing the same and the handling, treatment and sale of milk and dairy products, and to promulgate such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the Commissioner of Agriculture on this subject. (1933, c. 550, ss. 1-3; 1951, c. 1121, s. 1.)

Editor's Note.—The 1951 amendment rewrote this article.

§ 106-267.1. License required; fee; term of license; examination required.—Every person who shall test milk or cream in this State by the Babcock method or otherwise for the purpose of determining the percentage of butterfat or milk fat contained therein, where such milk or cream is bought and paid for on the basis of the amount of butterfat contained therein, shall first obtain a license from the Commissioner of Agriculture. Any person applying for such license or renewal of license shall make written and signed application on blanks to be furnished by the Commissioner of Agriculture for a license to test milk or cream where such milk or cream is bought and paid for on the basis of the amount of percentage of butterfat or milk fat contained therein. The granting of a license shall be conditioned upon the passing by the applicant of an examination, to be conducted by or under the direction of the Commissioner of Agriculture. All licenses so issued or renewed shall run for a period of one year from the date of issue unless sooner revoked, as provided in § 106-267.3. A license fee of two dollars (\$2.00) for each license so granted or renewed shall be paid to the Commissioner of Agriculture by the applicant before any license is granted. (1951, c. 1121, s. 1.)

§ 106-267.2. Rules and regulations.—The Commissioner of Agriculture shall establish and promulgate rules and regulations not inconsistent with this article that shall govern the granting of licenses under this article and shall establish and promulgate rules and regulations not inconsistent with this article that shall govern the manner of testing, including, but not in limitation thereof, the taking of samples, location where the testing of said samples shall be made and the length of time samples of milk or cream shall be held after testing. (1951, c. 1121, s. 1.)

§ 106-267.3. Revocation of license; proviso; hearing.—The Commissioner of Agriculture shall have power to revoke any license granted under the provisions of this article, upon good and sufficient evidence that the provisions of this article, or the rules and regulations of the Commissioner

of Agriculture are not being complied with: Provided, that before any license shall be revoked, an opportunity shall be granted the licensee, upon being confronted with the evidence, to show cause why such license should not be revoked. (1951, c. 1121, s. 1.)

§ 106-267.4. Representative average sample; misdemeanor, what deemed.—In taking samples of milk or cream from any milk can, cream can or any container of milk or cream, the contents of such milk can, cream can, or container of milk and cream shall first be thoroughly mixed either by stirring or otherwise, and the sample shall be taken immediately after mixing or by any other method which gives a representative average sample of the contents, and it is hereby made a misdemeanor to take samples by any method or to fraudulently manipulate such samples so as not to give an accurate and representative average sample where milk or cream is bought or sold and where the value of said milk or cream is determined by the butterfat contained therein. (1951, c. 1121, s. 1.)

§ 106-267.5. Standard Babcock testing glassware; scale and weights.—In the use of the Babcock test all persons shall use the "standard Babcock testing glassware, scales, and weights." The term "standard Babcock testing glassware, scales and weights" shall apply to glassware, scales and weights. It shall be unlawful for any person, firm, company, association, corporation or agent thereof to falsely manipulate, under-read or over-read the Babcock test or any other contrivance used for determining the quality of value of milk or cream where the value of said milk or cream is determined by the percentage of butterfat contained in the same or to make a false determination by the Babcock test or otherwise, or to falsify the record of such test or to pay on the basis of any test, measurement or weight except the true test, measurement or weight. (1951, c. 1121, s. 1.)

§ 106-268. Definitions. — The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in Article 12 of Chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this article and section.

The term "adulteration" means:

(a) Failure to meet definitions and standards as established by the board of Agriculture.

(b) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

(c) If any substance has been substituted wholly or in part thereof.

(d) If it is adjudged to be unfit for human consumption.

The term "misbranded" means: If (a) its labeling is false or misleading in any particular. (b) If it is offered for sale under the name of another dairy product or frozen dessert. (c) If it is sold in

package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

The Department of Agriculture, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department of Agriculture, acting through its duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this article or of this section have been violated, or whenever a duly authorized agent of the Department of Agriculture has cause to believe that any milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with microorganisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labelling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this article or section not in compliance with this article or

section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of the Department of Agriculture, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this article or section. In the event any "stop-sale" order shall be issued under the provisions of this article or section, the agents, inspectors or representatives of the Department of Agriculture shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1951, c. 1121, s. 1.)

§ 106-268.1. Penalties.—Any person, firm or corporation violating any of the provisions of this article, or any of the rules, regulations or standards promulgated hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars (\$100.00) and the cost of prosecution, or by imprisonment in the county jail for a period of not more than two months, or both such fine and imprisonment in the discretion of the court. (1951, c. 1121, s. 1.)

Art. 31. North Carolina Seed Law.

§ 106-277. Short title.—This article shall be known by the short title of "The North Carolina Seed Law." (1941, c. 114, s. 1; 1945, c. 828; 1949, c. 725.)

Editor's Note.—The 1945 and 1949 amendments rewrote this article to read as here set out.

§ 106-278. Construction to conform with federal act.—This article and the terms used therein shall be construed so as to conform in so far as possible with the construction placed upon the federal seed act and regulations issued thereunder, and to effectuate its purpose to make uniform the seed laws of the states. (1945, c. 828; 1949, c. 725.)

§ 106-279. Administered by commissioner.—This article shall be administered by the commissioner of agriculture of the state of North Carolina hereinafter referred to as the "commissioner." (1941, c. 114, s. 2; 1945, c. 828; 1949, c. 725.)

§ 106-280. Definitions.—When used in this article:

a. The term "person" includes a person, firm, partnership, corporation, company, society, association, trustee, agency, or receiver.

b. The term "agricultural seeds" shall include the seeds of grass, forage, cereal, fiber, cover crops and any other kinds of seed commonly recognized within this state as agricultural or field seeds, and mixtures of such seeds.

c. The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds in this state.

d. The term "lot of seed" means a definite quantity of seeds identified by a lot number, or mark, every portion or bag of which is uniform, for the factors which appear in the labeling, within permitted tolerances.

e. The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name; e. g., corn, wheat, lespedeza.

f. The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed or other characteristics by which it can be differentiated from other sorts of the same kind; e. g., Dixie 17 Hybrid Corn, Redhart Wheat, Kobe Lespedeza.

g. The term "pure seed" shall include all seeds of the kind or kind and variety under consideration, whether shriveled, cracked, or otherwise injured, and pieces of broken seeds larger than one half the original size.

h. The term "inert matter" shall include broken seeds when one half in size or less; seeds of legumes or crucifers with the seed coats removed; undeveloped and badly injured weed seeds such as sterile dodder which, upon visual examination, are clearly incapable of growth; empty glumes of grasses; attached sterile glumes of grasses (which must be removed from the fertile glumes except in Rhodes grass); dirt, stone, chaff, nematode, fungus bodies and any matter other than seeds.

i. The term "other crop seed" shall include all seeds of plants grown in this state as crops, other than the kind or kind and variety included in the pure seed, when not more than five per cent (5%) of the whole of a single kind or variety is present, unless designated as weed seeds.

j. The term "weed seeds" shall include the seeds of all plants generally recognized within this state as weeds and shall include noxious weed seeds.

k. Noxious weed seeds are seeds disseminated in seed subject to this article and shall be divided into two classes, "prohibited noxious weed seeds" and "restricted noxious weed seeds," defined as follows:

(1) "Prohibited noxious weed seeds" are the seeds of perennial weeds which not only reproduce by seed, but also spread by underground roots or stems and which, when established, are highly destructive and are not controlled in this state by cultural practices commonly used.

(2) "Restricted noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens of this state, and are difficult to control by cultural practices commonly used.

l. The term "germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to

produce a normal plant under favorable conditions.

m. The term "hard seeds" means the percentage of seeds which, because of hardness or impermeability do not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned.

n. The term "mixture" means seeds consisting of more than one kind or variety, each present in excess of five per cent (5%) of the whole.

o. The term "labeling" includes all labels, or tags, and other written, printed, or graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

p. The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this article.

q. The term "processing" means cleaning, scarifying, or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, or the preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

r. The terms "certified seed," "registered seed" and "foundation seed" mean seed that has been produced and labeled in accordance with the procedure and in compliance with the rules and regulations of an officially recognized seed certifying agency or association of agencies which have previously been approved by the commissioner.

s. The term "hybrid seed corn" as applied to field corn, sweet corn, or pop corn means the first generation seed of a cross produced by controlling the pollination, and by combining two, three or four inbred lines, or by combining one inbred line or a single cross with an open pollinated variety: Provided the board of agriculture may in its discretion and upon recommendation of the director of the agricultural experiment station, based upon results of the official variety tests, redefine "hybrid seed corn." Hybrid designations shall be treated as variety names.

t. The term "grower" shall mean any person who produces seed sold, offered, or exposed for sale directly as a landlord, tenant, sharecropper, or lessee.

u. The term "dealer" shall mean any person not classified as a "grower"; buying, selling or offering for sale any seed for seeding purposes, and shall include any person who has seed grown under contract for resale for seeding purposes.

v. The term "North Carolina seed analysis tag" shall mean the tag designed and prescribed by the commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the commissioner.

w. The term "non-coded" shall mean that the pedigree of the hybrid shall show the same designation for the hybrid as that originally assigned by the person developing the hybrid at the time it is first put in official test, production, or sale and each inbred line used in producing the hybrid

shall show the same designation as that used when it was first used in a hybrid which was put into official test, production, or sale. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725.)

§ 106-281. Tag and label requirements.—Each container of agricultural or vegetable seed, sold, offered for sale, or exposed for sale within this state for seeding purposes, shall have attached thereto a North Carolina seed analysis tag or label on which is plainly written or printed the following information:

a. For agricultural seeds:

(1) Commonly accepted name of kind and variety of each agricultural seed component in excess of five per cent (5%) of the whole and the percentage by weight of each, in the order of its predominance.

(a) Where more than one component is required to be named, the word "mixture" or "mixed" shall be included in the name on the label.

(b) Hybrid seed corn shall be labeled with the name and/or number by which the hybrid is commonly designated.

(2) Lot number or other identification.

(3) Origin, if known; if unknown, so stated.

(4) Percentage by weight of inert matter.

(5) Percentage by weight of other crop seeds.

(6) Percentage by weight of all weed seeds.

(7) The name and number per pound of each kind of "restricted" noxious weed seeds.

(8) For each named agricultural seed the:

(a) Percentage of germination exclusive of hard seeds.

(b) Percentage of hard seeds, if present.

(c) Calendar month and year the test was completed to determine such percentages.

(9) Name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

b. For vegetable seeds:

(1) Name of kind and variety of seed.

(2) Origin of snap beans; if unknown so stated.

(3) Per cent of germination with month and year of test.

(4) For seeds which germinate less than the standards last established by the commissioner and board of agriculture under this article the following information shall be shown on the label:

(a) The words "BELOW STANDARD" in not less than eight-point type.

(b) Percentage of germination exclusive of hard seed.

(c) Percentage of hard seed, if present.

(d) The month and year of test.

(5) The name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

c. Exemptions:

(1) The label requirements for peanuts, cotton and tobacco seed shall be limited to:

(a) Lot number or other identification.

(b) Origin, if known; if unknown, so stated.

(c) Commonly accepted name of kind and variety.

(d) Percentage of germination with month and year of test.

(e) Name and address of person who labeled

said seed or who sells, offers, or exposes said seed for sale.

(2) The label requirement as to the "origin" of snap beans shall not apply to seed in containers weighing less than ten (10) pounds.

(3) The label requirement as to the "germination" of vegetable seeds, when equal to or exceeding the standards last adopted by the commissioner and board of agriculture under this article, shall not apply to seed in containers weighing less than ten (10) pounds.

(4) When the required analysis and other information regarding the seed is present on a seedsman's label or tag, accompanied by the North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis," the provisions of this section shall be deemed to have been complied with.

(5) No tag or label shall be required, unless requested, on seeds sold directly to, and in the presence of, the purchaser and taken from a bag or container properly labeled in accordance with the provisions of this section.

(6) The official tag or label of the North Carolina Crop Improvement Association shall be considered an "official North Carolina seed analysis tag" when it provides information in compliance with this section, and when attached to containers of seed duly certified by the said association, and when fees applicable to said tag have been paid to the commissioner.

(7) No person shall be subject to the penalties of this article for having sold, offered, or exposed for sale in this state any agricultural or vegetable seeds which were incorrectly labeled or represented as to origin, kind and variety, when such seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration giving origin, kind and variety, and to take such other precautions as may be necessary to insure the identity to be that stated. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725.)

§ 106-282. Invoices and records.—Each person handling agricultural seed subject to this article shall keep for a period of two years complete records of each lot of agricultural and vegetable seed handled. When there is evidence of a violation of this article, invoices, records of purchases and sales, and any other records pertaining to the lot or lots involved shall be accessible for inspection by the commissioner or his authorized agent in connection with the administration of this article at any time during customary business hours. (1945, c. 828; 1949, c. 725.)

§ 106-283. Prohibitions.—It shall be unlawful:

a. For any person within this state to sell, offer, or expose for sale any agricultural or vegetable seed for seeding purposes:

(1) Unless a license has been obtained in accordance with the provisions of this article.

(2) Unless the test to determine the percentage of germination shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, prior to sale or exposure for sale or offering for sale or transportation.

(3) Not labeled in accordance with the provi-

sions of § 106-281, or having a false or misleading label, or having seed analysis tags attached to the containers of seed bearing thereon a liability or non-warranty clause: Provided, that the provisions of § 106-281 shall not apply to seed being sold by a grower to a dealer, or to seed consigned to or in storage in a seed cleaning or processing establishment for cleaning or processing: Provided, further, that any labeling or other representation which may be made with respect to the unclean seed shall be subject to this article.

(4) Containing prohibited noxious weed seeds, subject to tolerances and method of determination prescribed in the rules and regulations under this article.

(5) Seed that have been treated with poisonous material unless the label on such seed is plainly marked in not less than eight-point type with the information that they have been "poison treated."

b. For any person within this state:

(1) To detach, substitute, imitate, alter, deface or destroy any label provided for in this article, or in the rules and regulations made and promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purpose of this article.

(2) To disseminate any false or misleading advertisement concerning agricultural or vegetable seed in any manner or by any means.

(3) To hinder or obstruct in any way a duly authorized person in the performance of his duties under this article.

(4) To fail to comply with a written order of the commissioner or his authorized agent to withdraw from sale, or to move, or allow to be moved without written permission of the commissioner or his authorized agent, any seed ordered removed from sale not complying with the requirements of this article.

(5) To sell, offer, or expose for sale any seed labeled "foundation seed," "registered seed," or "certified seed" unless it has been produced and labeled in compliance with the rules and regulations of a seed-certifying agency approved by the commissioner.

(6) To sell, offer, or expose for sale any hybrid seed corn that has not been recorded annually with the commissioner, giving the true, non-coded pedigree of the hybrid and the name of the person who developed each inbred line involved in the cross. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725.)

§ 106-284. Disclaimers and nonwarranties.—The use of a disclaimer or nonwarranty clause in any invoice, advertising, labeling, or written, printed, or graphic matter, pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution, or in any proceeding for confiscation of seeds, brought under the provisions of this article, or the rules and regulations made and promulgated thereunder. (1945, c. 828; 1949, c. 725.)

§ 106-284.1. Administration.—For the purpose of carrying out the provisions of this article, it shall be the duty of the commissioner or his authorized agents and they are hereby authorized:

A. To sample, inspect, make analysis of, and test agricultural and vegetable seeds transported, sold, offered, or exposed for sale within this state for seeding purposes, at such time and place and

to such extent as he may deem necessary to determine whether said agricultural or vegetable seeds are in compliance with the provisions of this article and the rules and regulations made and promulgated thereunder, and to notify promptly the person who transported, sold, or offered or exposed seed for sale, of any violation.

B. The commissioner of agriculture jointly with the board of agriculture, after public hearing immediately following ten (10) days' public notice may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this article, which shall have the full force and effect of law. The commissioner and board of agriculture shall adopt rules, regulations and standards as follows:

(1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerances to be followed in the administration of this article.

(2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.

(3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.

(4) Declaring the maximum number of "restricted" noxious weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale, and to define "low grade seed."

(5) Declaring the minimum percentage of germination permitted sale for "agricultural seeds."

(6) Declaring "germination standards" for vegetable seeds.

(7) Declaring "North Carolina grade standards" for agricultural seed.

(8) Prescribing the form and use of tags to be used in labeling seed.

(9) Prescribing standards for moisture content of seeds.

(10) Prescribing such other rules and regulations as may be necessary to secure the efficient enforcement of this article.

C. To enter upon any public or private premises during business hours in order to have access to seeds and to obtain such information and records as may be deemed necessary to enforce the provisions of this article and the rules and regulations promulgated thereunder.

D. To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the commissioner or his authorized agent finds in violation of any of the provisions of this article or the rules and regulations made and promulgated thereunder, which order shall prohibit further sale or movement of such seed until such officer has evidence that the law has been complied with, or the seed otherwise legally disposed of, and a written release has been issued to the owner or custodian of said seed. However, any person repeatedly violating the labeling requirements of the law shall be subject to a penalty covering all costs and expenses incurred in connection with the withdrawal from sale and the release of said seed: Provided, that in respect to seeds which have been denied sale as provided in this paragraph, the

owner or custodian of such seed shall have the right to appeal from such order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of said order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of the court: And provided, further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this article.

E. To revoke any seed license or to refuse to issue a seed license to any person after such person has been given a hearing by the commissioner, notice of which hearing shall be given by registered mail at least ten (10) days before the date of such hearing, upon the commissioner of agriculture finding that such person has violated any of the provisions of this article or any rule or regulation adopted pursuant thereto: Provided, however, if the license of such person is revoked or refused he may appeal to the superior court within ten (10) days after the revocation or refusal of such license. Notice of such appeal shall be given to the commissioner within said ten (10) days whose duty shall be to immediately cause a transcript of the evidence and pertinent documents of the proceedings to be filed with the clerk of the superior court for Wake county, and the hearing in the superior court shall be before the presiding judge and the cause may not be heard de novo but upon the record filed with the clerk by the commissioner of agriculture.

F. To establish and maintain a "state seed laboratory" with adequate facilities and qualified personnel for such inspection, sampling and testing as may be necessary for the efficient enforcement of this article.

G. To make or provide for making purity and germination tests of seeds, upon request, for farmers or seedmen, and to prescribe rules and regulations governing such testing.

H. To accept for purposes of recording annually the hybrid seed corn which has been tested or approved the previous year in the official variety tests of the North Carolina Agricultural Experiment station in the section or sections of the state where it is to be offered for sale. The commissioner, by and with the advice of the director of the North Carolina Agricultural Experiment Station, shall refuse to accept for recording any hybrid corn seed which has been shown to be inferior, or which has not been tested, or is mislabeled with respect to genetic identity or has not been approved by the North Carolina Agricultural Experiment Station from the results of the official variety tests.

I. To publish or cause to be published at intervals information covering the findings of the state seed laboratory.

J. To cooperate with the United States department of agriculture in seed law enforcement. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725.)

§ 106-284.2. Seizure.—If the commissioner of agriculture has reason to believe that any agricultural or vegetable seeds fail to comply with the provisions of this article, he may apply for a writ of seizure to any court of competent jurisdiction in the county in which such seed is located. If the

trial judge finds, after having heard the contentions of both the commissioner and the person claiming title to such seed, that such seed does not meet the requirements of this article or rules and regulations adopted pursuant thereto, he may order the condemnation of such seed and require it to be disposed of in any manner consistent with the quality of the seed and the laws of the state. (1945, c. 828; 1949, c. 725.)

§ 106-284.3. Funds for expenses; licensing; seed analysis tags; inspection stamps.—For the purpose of providing a fund to defray the expenses of the inspection, examination, analysis of seeds and enforcement of the provisions of this article:

A. Each seed dealer selling, offering, or exposing for sale in this state, any agricultural or vegetable seed for seeding purposes, shall purchase from the commissioner for two cents each, official North Carolina seed analysis tags and shall attach a tag to each container holding ten pounds or more of seed.

B. Each seed dealer selling, offering, or exposing for sale in, or exporting from, this state, any agricultural or vegetable seeds, other than packet or package seeds, for seeding purposes, shall register with the commissioner his name and shall obtain a license annually on January 1st of each year, and shall pay for such license as follows:

(1) Twenty-five dollars (\$25.00), if a wholesaler, or a wholesaler and retailer.

(2) Ten dollars (\$10.00), if a retailer with sale in excess of one hundred dollars (\$100.00), for the calendar year. Each branch of any wholesaler or retailer shall be required to obtain a retail license.

(3) One dollar (\$1.00), if a retailer at a permanent location with sales not in excess of one hundred dollars (\$100.00): Provided, that if and when the seed sales for the calendar year shall exceed one hundred dollars (\$100.00), application must be made for a ten dollar (\$10.00) license, credit to be given for the one dollar (\$1.00) license previously secured.

C. A one dollar (\$1.00) inspection stamp shall be purchased from the commissioner for each seventy-two (72) dozen packets or packages of vegetable or flower seeds, or fraction thereof. The said stamp shall be secured by the producer, grower, jobber or other person, firm or corporation shipping such seed into the state before shipment to agent or retailer, and shall be furnished to said agent or retailer for attachment to display case: Provided, also, that any producer, grower, jobber or other person, firm, or corporation, residing within this state shall secure said stamp before furnishing any such seed to any agent or retailer within the state for resale. The said agent or retailer is made responsible for obtaining said stamp which shall be attached to the display case before the seed are offered or exposed for sale, and shall expire at the end of the calendar year for which issued: Provided, further that in cases where package seed of one kind or variety are offered or exposed for sale in boxes or display cases not in excess of six (6) dozen packages, a ten cent (10c) stamp shall be purchased from the commissioner and attached to said box or display case.

D. No owner or operator of any harvester or threshing machine operating on a share basis and selling only the seed obtained in this manner shall

come under the provisions of this section. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725.)

Editor's Note.—The 1947 amendment increased the price of tags from one cent to two cents each.

§ 106-284.4. Violations and prosecutions.—Any person, firm or corporation violating any provision of this article or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than five hundred dollars (\$500.00) or be imprisoned for not more than six (6) months, or both.

When the commissioner of agriculture finds that this article or the rules and regulations thereunder have been violated, as shown by tests, examination or analysis, he shall give notice to the person charged with violating this article, designating a time and place for a hearing. The person involved shall have the right to introduce evidence either in person or by agent or attorney. If after said hearing, or without a hearing in case said person fails or refuses to appear, the commissioner decides that the evidence warrants prosecution, he, or his duly authorized agent or agents, may institute proceedings in a court of competent jurisdiction against such person. The sworn statement of the analyst shall be admitted as evidence in any court of this state in any proceeding instituted under this article, but upon motion of the accused, such analyst shall be required to appear as a witness and be subject to cross-examination.

When the provisions of this article have been fully complied with regarding any seeds which have been withdrawn from sale or have been ordered by the commissioner to be disposed of for other than seeding purposes, the commissioner, in his discretion, in writing may release the same for sale upon the payment of all costs and expenses incurred by the department of agriculture in any proceeding connected with such withdrawal. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725.)

Art. 31A. Seed Potato Law.

§ 106-284.5. Title.—This article shall be known as the Seed Potato Law. (1947, c. 467, s. 1.)

§ 106-284.6. Purposes; definitions and standards.—In order to improve farming in North Carolina and to enable potato growers to secure higher quality Irish potatoes and sweet potatoes and parts thereof for the purpose of propagation, and in order to prevent the spread of diseases affecting the future stability of the potato industry and the general welfare of the public, the following definitions and standards are hereby adopted:

"Certified" sweet potatoes and Irish potatoes and parts thereof for propagation uses shall mean sweet potatoes and Irish potatoes and parts thereof which conform to the standards adopted by the state board of agriculture, which shall conform to the standards fixed by the International Crop Improvement Association in classifying and determining what shall constitute "certified" potatoes for propagation uses.

"U. S. No. 1" Irish potatoes and/or sweet potatoes when the same are intended to be used for propagation purposes shall mean Irish and/or sweet potatoes which conform to the standards issued by the United States department of agriculture for "U. S. No. 1" potatoes when the

same are intended to be used for propagation purposes. (1947, c. 467, s. 2.)

§ 106-284.7. Unlawful to sell seed potatoes not conforming to standards; rules and regulations.—It shall be unlawful for any person, firm or corporation to pack for sale, offer or expose for sale, or ship into this state for such purposes, or sell, any Irish potatoes, sweet potatoes or parts thereof intended for propagation purposes, which do not conform to the standards of "certified" and "U. S. No. 1" potatoes set out in § 106-284.6.

The state board of agriculture is hereby authorized to make such reasonable rules and regulations as may be necessary to carry out the purposes of this article. (1947, c. 467, s. 3.)

§ 106-284.8. Employment of inspectors; prohibiting sale.—The board of agriculture is authorized to employ qualified inspectors to assist in the enforcement of laws and regulations affecting the distribution and sale of Irish potatoes and sweet potatoes and parts thereof intended for propagation purposes, and may prohibit the sale for propagation purposes of such potatoes which fail to meet the standards set out in § 106-284.6, and which have not been produced and labeled in accordance with the provisions of this article or rules and regulations adopted pursuant thereto. (1947, c. 467, s. 4.)

§ 106-284.9. Inspection; interference with inspectors; "stop sale" orders.—To effectively enforce the provisions of this article, the commissioner of agriculture shall require the inspectors to inspect Irish and sweet potatoes and parts thereof shipped into, possessed, sold or offered for sale within this state for the purpose of propagation, and may enter any place of business, warehouse, common carrier or other place where such potatoes are stored or being held, for the purpose of making such inspection; and it shall be unlawful for any person, firm or corporation in custody of such potatoes or of the place in which the same are held to interfere with the commissioner or his duly authorized agents in making such inspections. When the commissioner or his authorized inspectors find potatoes or parts thereof held, offered or exposed for sale in violation of any of the provisions of this article or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop sale" order to the owner or custodian of any such potatoes and it shall be unlawful for anyone, after receipt of such "stop sale" order, to sell for propagation purposes any potatoes with respect to which such order has been issued. Such "stop sale" order shall not prevent the sale of any such potatoes for other than propagation purposes. (1947, c. 467, s. 5.)

§ 106-284.10. Authority to permit sale of substandard potatoes.—Notwithstanding any other provisions of this article, the state board of agriculture is authorized and directed when the public necessity, welfare, economy, or any emergency situation requires it, to permit for such periods of time as, in its discretion, may seem necessary, the sale for propagation purposes of potatoes which do not meet the standards set out in § 106-284.6, but which do meet such other lower standards as the board of agriculture may describe. (1947, c. 467, s. 6.)

§ 106-284.11. Sale of potatoes by grower to planter with personal knowledge of growing conditions.—Nothing in this article shall prohibit the sale, for propagation purposes in this state, of Irish or sweet potatoes or parts thereof grown within this state when sold by the grower thereof to a planter having personal knowledge of the conditions under which such potatoes were grown. (1947, c. 467, s. 7.)

§ 106-284.12. Violation a misdemeanor; notice to persons violating article; opportunity of hearing; duties of solicitors.—Any person, firm or corporation violating any of the provisions of this article or any rule or regulation promulgated pursuant thereto shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. Whenever the commissioner of agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the person, firm or corporation if same be known. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner and the board of agriculture. If it appears that any of the provisions of this article have been violated, the commissioner of agriculture shall certify the facts to the solicitor in the district in which the inspection was made, and furnish that officer with a copy of the results of the inspection of such Irish potatoes, sweet potatoes, or parts thereof duly authenticated by the inspector making such inspection, under the oath of such inspector. It shall be the duty of the several solicitors of the superior courts of the state and the solicitors of inferior courts to prosecute any case involving the violation of the provisions of this article when requested to do so by the commissioner of agriculture. (1947, c. 467, s. 8.)

§ 106-284.13. Article 30 not repealed.—Nothing in this article shall be construed as repealing article 30 of chapter 106 of the General Statutes, but all other laws and clauses of laws in conflict with the provisions of this article are repealed to the extent of such conflict. (1947, c. 467, s. 9.)

Art. 34. Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-307.1. Serums, vaccines, etc., for control of animal diseases.

Editor's Note.—For comment on this and the five following sections, see 21 N. C. Law Rev. 323.

§ 106-307.4. Livestock brought into state.

Validity of Regulations.—Regulations relating to the importation of cattle, promulgated under authority of this section for the purpose of control of brucellosis or Bang's disease, if reasonable in their scope and incidence and not in conflict with federal regulations or statutes already preempting the field, are constitutional and valid. *State v. Lovelace*, 228 N. C. 186, 45 S. E. (2d) 48.

A provision in the regulations promulgated under authority of this section, limiting the exception to the requirement of a health certificate for imported cattle solely to those consigned to a slaughterhouse, is reasonable and valid. *Id.*

§ 106-307.6. Violation made misdemeanor.

Applied in *State v. Lovelace*, 228 N. C. 186, 45 S. E. (2d) 48.

Part 2. Foot and Mouth Disease; Rinderpest; Fowl Pest; Newcastle Disease.

§ 106-308. Appropriation to combat animal and

fowl diseases.—If the foot and mouth disease, rinderpest (cattle plague), fowl pest, or Newcastle disease (Asiatic or European types), or any other type of foreign infectious disease which may become a menace to livestock and poultry and so declared to be by the Secretary of Agriculture of the United States, Chief of the United States Bureau of Animal Industry and the Commissioner of Agriculture of North Carolina, seem likely to appear in this State and an emergency as to such disease or diseases is declared by the Secretary of Agriculture of the United States, or his authorized agents, and the North Carolina Department of Agriculture has no funds available to immediately meet the situation in co-operation with the United States Department of Agriculture, the Director of the Budget, upon approval of the Governor and Council of State, shall set aside, appropriate and make available out of the Contingency and Emergency Fund such sum as the Governor and Council of State shall deem proper and necessary, and the Budget Bureau shall place said funds in an account to be known as the Animal and Fowl Disease Appropriation and make same available to the North Carolina Department of Agriculture, to be used by the North Carolina Department of Agriculture in the work of preventing or eradicating the above diseases, or any of them. Funds from the above appropriation shall be paid only for work in this connection upon warrants approved by the Commissioner of Agriculture. The provisions of Part 4 of Article 34 of Chapter 106 of the General Statutes relating to the compensation for killing diseased animals shall be applicable to animals infected with or exposed to the diseases named and described in this section, as well as to the destruction of material contaminated by or exposed to the diseases described in this section, as well as the necessary cost of the disinfection of materials. In no event shall any of the above appropriation be spent for the purposes set forth in this section unless the funds appropriated by this State are matched in an equal amount by the federal government or one of its agencies to be spent for the same purposes. (1915, c. 160, s. 1; 1951, c. 799; C. S. 4875.)

Editor's Note.—The 1951 amendment rewrote this section and changed the heading of Part 2.

Part 7. Rabies.

§ 106-364. Definitions.—The following definitions shall apply to §§ 106-364 to 106-387:

(a) The term "dog" shall mean dogs of any sex.

(b) The term "vaccination" shall be understood to mean the administration of anti-rabic vaccine approved by the department of agriculture, and the United States bureau of animal industry, non-virulent and potent as shown by the required tests of the United States bureau of animal industry. (1935, c. 122, s. 1; 1949, c. 645, s. 1.)

Editor's Note.—The 1949 amendment made changes in subsection (b).

§ 106-367. Time of vaccination.—The vaccination of all dogs in the counties shall begin annually on April first and shall be completed within ninety (90) days from the date of beginning the vaccination in the several counties: Provided, however, that the county health officer, in those counties having health officers, and the county commissioners, in those counties which do not

have health officers, may require the vaccination of all dogs within any area of said county when such vaccination is deemed necessary for the control of rabies. (1935, c. 122, s. 4; 1949, c. 645, s. 2.)

Editor's Note.—The 1949 amendment added the proviso.

§ 106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs.

Local Modification.—Forsyth: 1949, c. 622, s. 2; Guilford: 1949, c. 462, § 1.

§ 106-372. Fee for vaccination; dog tax credit; penalty for late vaccination.—The rabies inspector shall collect from the owner of each dog vaccinated as provided for in § 106-368, not more than one dollar (\$1.00), to be fixed by the board of county commissioners for each dog, the same to be credited on the dog tax when certificate of vaccination is presented to the sheriff or tax collector of said county. Any owner who fails to have his dog vaccinated at the time the rabies inspector is in the township in which the owner resides as provided in § 106-368, shall have said dog vaccinated in accordance with § 106-371 and shall pay the rabies inspector the additional sum of twenty-five cents to be retained by him for each dog treated: Provided, that in cases where dogs are vaccinated in accordance with § 106-371, the total charge for such treatment shall not exceed one dollar (\$1.00) to be fixed by the board of county commissioners, only fifty cents of which shall be credited on such dog tax. (1935, c. 122, s. 9; 1941, c. 259, s. 7; 1949, c. 645, s. 5.)

Local Modification.—Guilford: 1949, c. 462, s. 2.

Session Laws 1949, cc. 529, 1226, struck out the words "Edgecombe" and "Nash" in Public Laws 1941, c. 259, s. 7, so as to make this section applicable to such counties.

Editor's Note.—The 1949 amendment struck out the words "seventy-five cents" and inserted in lieu thereof the words and figures "one dollar (\$1.00), to be fixed by the board of county commissioners."

§ 106-372.1. Rabies inspector to collect dog tax; fee for vaccination.—The rabies inspector shall collect from the owner of each dog vaccinated as provided in § 106-368, the full amount of the tax imposed by § 67-5. The rabies inspector shall be furnished with forms of receipt books to be used in collecting such dog taxes and, at the time same is collected, shall send carbon copies thereof to the county auditor and to the sheriff or tax collector of the county and on the said receipt books shall be kept stubs provided for such purpose, the name of the taxpayer, the amount paid, and the date of collection. The rabies inspector shall, by the end of each month in which said taxes are collected, pay over to the sheriff or tax collector of the county the amount of dog taxes collected by him after deducting therefrom for his services in vaccinating such dogs, seventy-five cents (75c) for each dog vaccinated and five cents (5c) for each dog vaccinated for his service in making such reports. The sheriff or tax collector of the county shall give the taxpayer credit on the tax books for the full amount of the tax so paid by the taxpayer: Provided, in cases where the dogs are vaccinated in accordance with § 106-371, the rabies inspector shall collect from the owner of the dog twenty-five cents (25c) additional for each dog vaccinated, which additional amount shall be retained by the inspector.

This section shall be in full force and effect in lieu of the provisions of § 106-372 in those coun-

ties in the state in which the boards of county commissioners shall, on or before the first day of July in any year, accept the provisions hereof as applicable to that county by resolution duly adopted and spread upon the minutes of the board, and thereafter the provisions of § 106-372 shall not be applicable to that county. Upon adoption of this provision, it shall be applicable for the year beginning January first thereafter, and shall thereafter remain in full force and effect.

The sheriff or tax collector of any county shall be, notwithstanding the provisions of this section, fully authorized and empowered to collect any taxes due by the taxpayer which have not been collected in the manner above provided. The boards of county commissioners are authorized to pay the premiums on the bonds required of rabies inspectors for the forthcoming of the dog taxes collected under the authority of this section, provided, that this section shall not apply to Bladen, Pender, Alamance, Madison, Cabarrus, Durham, Burke, Wilkes, Ashe, Stokes, Surry, Scotland, Robeson, Sampson, Rowan, Stanly, Anson, Pitt, Iredell, Catawba and Rutherford counties. (1945, c. 571.)

§ 106-373. Vaccination of dogs after annual vaccination period.—It shall be the duty of the owner of any dog born after the annual vaccination of dogs in his county or any dog that was not six months old at the time of said annual vaccination to take the same when six months old to a rabies inspector for the purpose of having same vaccinated. The fee charged in such cases by the rabies inspector shall not exceed one dollar (\$1.00) per animal, to be fixed by the board of county commissioners. (1935, c. 122, s. 10, c. 344; 1941, c. 259, s. 8; 1949, c. 645, s. 6.)

Local Modification.—Session Laws 1949, cc. 529, 1226, struck out the words "Edgecombe" and "Nash" in Public Laws 1941, c. 259, s. 8, so as to make this section applicable to such counties.

Editor's Note.—The 1949 amendment struck out of the second sentence the words "seventy-five cents per animal" and inserted in lieu thereof the words and figures "one dollar (\$1.00) per animal, to be fixed by the board of county commissioners."

§ 106-375. Quarantine of districts infected with rabies.—The county health officer, and in those counties where health officers are not employed, the board of county commissioners, may declare quarantine against rabies in any designated district when in its judgment this disease exists to the extent that the lives of persons are endangered and all dogs in said district shall be confined on the premises of the owner or in a veterinary hospital: Provided, a dog may be permitted to leave the premises of the owner if on leash or under the control of its owner or other responsible person. (1935, c. 122, s. 12; 1941, c. 259, s. 9; 1949, c. 645, s. 3.)

Editor's Note.—The 1949 amendment inserted the words "and in those counties where health officers are not employed, the board of county commissioners."

Part 8. Bang's Disease.

§ 106-389. "Bang's disease" defined; co-operation with the federal department of agriculture.—Bang's disease shall mean the disease wherein an animal is infected with the Bang's bacillus, irrespective of the occurrence or absence of an abortion. An animal shall be declared infected with Bang's disease if it reacts to a serological test, or,

if the Bang's bacillus has been found in the body or its secretions or discharges. The state veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves between the ages of four and eight months, and older cattle, with strain nineteen Brucella vaccine in accordance with the recommendations of the United States bureau of animal industry. Such vaccination shall be done under rules and regulations promulgated by the department of agriculture. The committee of agriculture may permit the sale of valuable animals that have reacted to an official Bang's test or are suspicious to same, provided such animals go direct to infected herds that have been vaccinated with strain nineteen Brucella vaccine, as provided for in this section, and are held under quarantine in accordance with the law and regulations covering. Such vaccinated animals shall be permanently identified by tattooing or other methods approved by the committee of agriculture and no indemnity shall be paid on any such vaccinated animal. It shall be the duty of the state veterinarian to test all animals vaccinated with strain nineteen Brucella vaccine twelve months after the date of vaccination and regularly thereafter. All such vaccinated animals that show a positive reaction to an official Bang's test eighteen months or more after vaccination shall be considered as affected with Bang's disease and shall be branded with the letter "B" in accordance with the law covering. It shall be unlawful to sell, offer for sale, distribute or use strain nineteen Brucella vaccine or any other product containing living Bang's organisms, except as provided for in this section.

The control and eradication of Bang's disease in the herds of the state shall be conducted as far as funds of the department of agriculture will permit, and in accordance with the rules and regulations made by the said department. Said department of agriculture is hereby authorized to co-operate with the United States department of agriculture in the control and eradication of Bang's disease. (1937, c. 175, s. 2; 1945, c. 462, s. 1.)

Editor's Note.—The 1945 amendment omitted the words "or if it has been treated with a live culture of the Bang bacillus," formerly appearing at the end of the second sentence, and inserted the part of the first paragraph beginning with the third sentence.

§ 106-390. Blood samples; diseased animals to be branded and quarantined; sale, etc.—All blood samples for a Bang's disease test shall be drawn by a qualified veterinarian whose duty it shall be to brand all animals affected with Bang's disease with the letter "B" on the left hip or jaw, not less than three or more than four inches high, and to tag such animals with an approved cattle ear tag and to report same to the state veterinarian. Cattle affected with Bang's disease shall be quarantined on the owner's premises. No animal affected with Bang's disease shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same is made to the state veterinarian. All dairy and breeding cattle over six months of age offered or sold at public sale, except for immediate slaughter, shall be negative to a Bang's test made within thirty days prior to sale and ap-

proved by the state veterinarian. (1937, c. 175, s. 3; 1945, c. 462, s. 2.)

Editor's Note.—The 1945 amendment added the last sentence. The amendatory act directed that the sentence be added to § 106-389 but it seems clear that this section was intended.

Art. 35. Public Livestock Markets.

§ 106-406. Permits for public livestock markets; restraining order for certain violations.

Cited in *State v. Lovelace*, 228 N. C. 186, 45 S. E. (2d) 48.

§ 106-408. Marketing facilities prescribed; time of sales; records of purchases and sales.

The sales of all livestock at livestock auction markets shall start promptly at 1:00 P. M. on each sales day and the selling of livestock shall be continuous until all livestock is sold. (1941, c. 263, s. 3; 1949, c. 997, s. 1.)

Local Modification.—Robeson: 1951, c. 160.

Editor's Note.—The 1949 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

§ 106-409. Health certificates for cattle removed for nonslaughter purposes; identification; information form; bill of sale.—No cattle except those for immediate slaughter shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved or provided by the commissioner of agriculture, showing that such animals are apparently healthy and come directly from a herd all of which animals in the herd have passed a negative test for Bang's disease within twelve months prior to the date of sale, or that said animal or animals have passed a satisfactory test for Bang's disease made within thirty days prior to sale and such other tests and vaccinations as the commissioner of agriculture may require.

(1949, c. 997, s. 2.)

Editor's Note.—The 1949 amendment inserted the words "or provided" in line six of the first sentence. As only this sentence was changed the rest of the section is not set out.

§ 106-410. Health certificates for swine removed for nonslaughter purposes; identification; information form; bill of sale.—No swine, except those for immediate slaughter, shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved or provided by the commissioner of agriculture, showing that such animals are apparently healthy and that they have received a proper dose of anti-hog cholera serum not more than twenty-one days or a proper dose of serum and virus not less than thirty days prior to the date of sale, and such other vaccinations as may be required by the commissioner of agriculture. All such swine shall be identified by an approved, numbered ear tag and descriptions which shall be entered on the health certificate. A copy of said certificate shall be kept on file by the market. All swine removed from any public livestock market for immediate slaughter shall be identified by a distinguishing paint mark or by other methods approved by the commissioner of agriculture and the person removing same shall sign a form in duplicate showing number of hogs, their description, where same are to be slaughtered or resold for slaughter. Said swine shall be resold only to a recognized slaughter plant or the agent of same, or to a person, firm

or corporation that handles swine for immediate slaughter only and said swine shall be used for immediate slaughter only. No market operator shall allow the removal of any swine from a market in violation of this section.

Provided, however, that the commissioner of agriculture may permit swine to be shipped out of the state of North Carolina, without vaccination and under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4.)

Editor's Note.—The 1949 amendment inserted the words "or provided" in line six of the first paragraph, and added the second paragraph.

§ 106-411. Regulation of use of livestock removed from market; swine shipped out of state.—Any person or persons who shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for slaughter in accordance with this article and the regulations issued in accordance with same. The owner of said animals shall be charged with the responsibility of having said animals slaughtered and shall be liable for all damages resulting from diverting them to other uses or failing to have them slaughtered, in addition to the criminal liability imposed in this article.

Provided this section shall not apply to swine shipped out of this state to holding or feeding lots as provided for in G. S. § 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5.)

Editor's Note.—The 1949 amendment added the second paragraph.

§ 106-413. Sale, etc., of certain diseased animals prohibited; application of article; sales by farmers.

Editor's Note.—

The word "identification" in the tenth line of this section should read "identification."

§ 106-415. Fees for permits; term of permits; cost of tests, serums, etc.—The commissioner of agriculture is hereby authorized to collect a fee of one hundred dollars (\$100.00) for each permit issued to a public livestock market under the provisions of this article. The fees provided for in this article shall be used exclusively for the enforcement of this article. All permits issued under the provisions of this article shall be effective until the following July first unless cancelled for cause. The cost of all tests, serums, vaccine, and other medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and said cost shall constitute a lien against all of said animals. (1941, c. 263, s. 10; 1949, c. 997, s. 6.)

Editor's Note.—The 1949 amendment increased the fee from \$25.00 to \$100.00.

Art. 38. Marketing Cotton and Other Agricultural Commodities.

§ 106-435. Fund for support of system; collection and investment.

Cited in *Harris v. Fairley*, 232 N. C. 551, 61 S. E. (2d) 616.

§ 106-439. Duties of superintendent; manner of operating warehouse system.

Cited in *Harris v. Fairley*, 232 N. C. 551, 61 S. E. (2d) 616.

§ 106-442. Transfer of receipt; issuance and effect of receipt.

Official warehouse receipts are negotiable by written assignment and delivery, and negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation if the person to whom the receipt was negotiated took same for value, in good faith, and without notice of the breach of duty. *Harris v. Fairley*, 232 N. C. 551, 61 S. E. (2d) 616.

§ 106-451. Numbering of cotton bales by public ginneries; public gin defined.—Any person, firm or corporation operating any public cotton gin; that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways: (1) attach a metal strip, carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number; (2) impress the serial number upon one of the bands or ties around the bale. Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days.

Any person, firm or corporation buying a bale of cotton on which this number has: (1) been removed; (2) defaced by cutting; (3) or otherwise altered, unless a new metal strip is attached and impression made by the original gin ginning said bale or bales of cotton, shall be guilty of a misdemeanor for each and every offense and upon conviction shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not more than thirty (30) days.

Every public ginnery, as defined in the first paragraph of this section, shall keep a book in which shall be registered all cotton received at the gin to be ginned in the name of the owner of the cotton and the name of the person from whom the cotton is received for ginning. Any person giving false information for entry in this book shall be guilty of a misdemeanor. There shall be furnished by the ginner for each bale of cotton ginned, to the owner thereof, a gin ticket bearing the name of the gin, the serial number of the bale prescribed by the first paragraph of this section, the weight of the bale and the name of the owner of the cotton. Such gin ticket shall be presented, for comparison with the serial number prescribed in the first paragraph of this section, at the time such bale is sold or offered for sale, as prima facie evidence of ownership thereof. (1923, c. 167; 1949, c. 824.)

Editor's Note.—The 1949 amendment deleted "(1) mark in color upon the bagging of the bale, in figures", formerly appearing in the first paragraph, and renumbered former (2) and (3) to be (1) and (2), respectively. It also added the second and third paragraphs.

§ 106-451.1. Purchasers of cotton to keep records of purchases.—Every cotton broker or other person buying cotton from the producer after it is ginned shall keep a record of such purchase for a period of one year from date of purchase. This record shall contain the name and address of the

seller of the cotton, the date on which purchased, the weight or amount and the serial number of the bales provided for by § 106-451. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court: Provided, any person, firm or corporation who purchases cotton which has been ginned outside this state shall be required to keep only so much of the records herein above specified as purchasers are required to keep by the law of the state where said cotton was ginned. (1945, c. 61; 1947, c. 977.)

Editor's Note.—The 1947 amendment added the proviso.

Art. 39. Leaf Tobacco Warehouses.

§ 106-452. Maximum warehouse charges.

Cited in *Davies Warehouse Co. v. Bowles*, 321 U. S. 144, 64 S. Ct. 474, 88 L. Ed. 635.

§ 106-453. Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed.

Immediately upon the weighing of any lot or lots of tobacco, the tobacco weigher shall furnish, upon request, to the person delivering such tobacco to the scale for weighing a true list showing the number of baskets of tobacco weighed and the individual weight of each such basket so presented. (Rev., s. 3043; 1895, c. 81, s. 2; 1951, c. 1105, s. 1; C. S. 5125.)

Editor's Note.—The 1951 amendment added the above paragraph at the end of the section. As the rest of the section was not affected by the amendment, it is not set out.

Art. 40. Leaf Tobacco Sales.

§ 106-461. Nested, shingled or overhung tobacco.

Editor's Note.—Session Laws 1945, c. 305, repealed Public Laws 1933, c. 467, sec. 5, which previously exempted Alamance, Person, Rockingham, Surry, Vance and Warren counties from the provisions of §§ 106-461 through 106-463. Therefore, the counties named are no longer exempted from the provisions of said sections.

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited.

Membership in the several boards of trade may be divided into two categories:

A. Warehousemen

B. Purchasers of leaf tobacco other than warehousemen—

Purchasers of leaf tobacco may be: (1) Participating or (2) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this act or coming within the provisions of this act, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable

for any of the acts, omissions or commissions of the several tobacco boards of trade.

(1951, c. 383.)

Editor's Note.—The 1951 amendment directed that the matter set out above be inserted between the fifth and sixth paragraphs of this section. As the original paragraphs of the section were not changed by the amendment they are not set out.

Art. 45. Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-503.1. Board authorized to construct and finance facilities and improvements for fair.

1. **Borrowing Money and Issuing Bonds.**—For the purpose of building, enlarging and improving the facilities on the properties of the state fair, the state board of agriculture is hereby empowered and authorized to borrow a sum of money not to exceed one hundred thousand dollars (\$100,000.00), and to issue revenue bonds therefor, payable in series at such time or times and bearing such rate of interest as may be fixed by the governor and council of state: Provided, that no part of the payments of the principal or interest charges on said loan shall be made out of the general revenue of the state of North Carolina, and the credit of the state of North Carolina and the state department of agriculture or the agricultural fund, other than the revenue of the state fair funds, shall not be pledged either directly or indirectly for the payment of said principal or interest charges. The receipts, funds, and any other state fair assets may be pledged as security for the payment of any bonds that may be issued.

2. **Contracts and Leases; Pledge of Gate Receipts, etc.**—For the further purpose of acquiring, constructing, operating and financing said properties and facilities for the North Carolina state fair, the board of agriculture may enter into such agreements, contracts and leases as may be necessary for the purpose of this section, and may pledge, appropriate, and pay such sums out of the gate receipts or other revenues coming to the state board of agriculture from the operation of any facilities of the state fair as may be required to secure, repay, or meet the principal and interest charges on the loan herein authorized.

3. **Gifts and Endowments.**—The state board of agriculture may receive gifts and endowments, whether real estate, moneys, goods or chattels, given or bestowed upon or conveyed to them for the benefit of the state fair, and the same shall be administered in accordance with the requirements of the donors. (1945, c. 1009.)

Part 2. County Societies.

§ 106-505. Incorporation; powers and term of existence.—Any number of resident persons, not less than ten, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, subject to any other applicable provisions of law, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, as may be needful to promote the objects of their association.

Whenever any such association is formed subsequent to April 1, 1949, a copy of the articles of incorporation shall be filed with the secretary of state, together with any other information the secretary of state may require. A fee of ten dollars (\$10.00) shall be paid to the secretary of state when such articles are filed. Upon receipt of such articles in proper form, and such other information as may be required, and the filing fee, the secretary of state shall issue a charter of incorporation.

The corporate existence shall continue as long as there are ten members, during the will and pleasure of the general assembly. (Rev., ss. 3868, 3869; Code, s. 2220; R. C., c. 2, ss. 6, 7; 1852, c. 2, ss. 1, 2, 3; 1949, c. 829, s. 2; C. S. 4941.)

Editor's Note.—The 1949 amendment inserted the words "subject to any other applicable provisions of law" in lines eight and nine of the first paragraph and struck out of said paragraph the words "not exceeding ten thousand dollars in value." The amendment also inserted the second paragraph.

§ 106-507. Exhibits exempt from state and county taxes.—Any society or association organized under the provisions of this chapter, desiring to be exempted from the payment of state, county, and city license taxes on its exhibits, shows, attractions, and amusements, shall each year, not later than sixty (60) days prior to the opening date of its fair, file an application with the commissioner of revenue for a permit to operate without the payment of said tax; said application shall state the various types of exhibits and amusements for which the exemption is asked, and also the date and place they are to be exhibited. The commissioner of revenue shall immediately refer said application to the commissioner of agriculture for approval or rejection. If the application is approved by said commissioner of agriculture, the commissioner of revenue shall issue a permit to said society or association authorizing it to exhibit within its fair grounds and during the period of its fair, without the payment of any state, county, or city license tax, all exhibits, shows, attractions, and amusements as were approved. Provided, however, that the commissioner of revenue shall have the right to cancel said permit at any time upon the recommendation of said commissioner of agriculture. Any society or association failing to so obtain a permit from the commissioner of revenue or having its permit canceled shall pay the same state, county, and city license taxes as may be fixed by law for all other persons or corporations exhibiting for profit within the state shows, carnivals, or other attractions. (Rev., s. 3871; 1905, c. 513, s. 2; 1935, c. 371, s. 107; 1949, c. 829, s. 2; C. S. 4944.)

Editor's Note.—Prior to the 1949 amendment a committee exercised the authority now vested in the commissioner of agriculture.

§ 106-508. Funds to be used in paying premiums.—All moneys so subscribed, as well as that received from the state treasury as herein provided, shall after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their by-laws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufactures, mechanical implements, tools

and productions as are of the growth and manufacture of the county or region, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county or region wherein such societies are respectively organized. (Rev., s. 3873; Code, s. 2223; R. C., c. 2, s. 9; 1852, c. 2, s. 7; 1949, c. 829, s. 2; C. S. 4945.)

Editor's Note.—The 1949 amendment inserted the words "or region" in lines twelve and fifteen.

Part 4. Supervision of Fairs.

§ 106-520.1. Definition.—As used in this article the word "fair" means a bona fide exhibition designed, arranged and operated to promote, encourage and improve agriculture, horticulture, livestock, poultry, dairy products, mechanical fabrics, domestic economy, and 4-H Club and Future Farmers of America activities, by offering premiums and awards for the best exhibits thereof or with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.2. Use of "fair" in name of exhibition.—It shall be unlawful for any person, firm, corporation, association, club, or other group of persons to use the word "fair" in connection with any exhibition, circus, show, or other variety of exhibition unless such exhibition is a fair within the meaning of G. S. § 106-520.1. (1949, c. 829, s. 1.)

§ 106-520.3. Commissioner of agriculture to regulate.—The commissioner of agriculture, with the advice and approval of the state board of agriculture, is hereby authorized, empowered and directed to make rules and regulations with respect to classification, operation and licensing of fairs, so as to insure that such fairs shall conform to the definition set out in G. S. § 106-520.1, and shall best promote the purposes of fairs as set out in such definition. Every fair, and every exhibition using the word "fair" in its name, except fairs classified by the commissioner of agriculture as non-commercial community fairs, must comply with the standards, rules and regulations set up and promulgated by the commissioner of agriculture, and must secure a license from the commissioner of agriculture before such exhibition or fair is staged or operated. No license shall be issued for any such exhibition or fair unless it meets the standards and complies with the rules and regulations of the commissioner of agriculture with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.4. Local supervision of fairs.—No county or regional fairs shall be licensed to be held unless such fair is operated under supervision of a local board of directors who shall employ appropriate managers, who shall be responsible for the conduct of such fair, and otherwise comply with the standards, rules and regulations promulgated by the commissioner of agriculture. The commissioner of agriculture, with the advice and approval of the state board of agriculture, shall make rules and regulations requiring county and regional fairs to emphasize agricultural, education, home and industrial exhibits by providing adequate premiums. (1949, c. 829, s. 1.)

§ 106-520.5. Reports.—Every fair shall make such reports to the commissioner of agriculture, as said commissioner may require. (1949, c. 829, s. 1.)

§ 106-520.6. Premiums and premium lists supplemented.—The state board of agriculture may

supplement premiums and premium lists for county and regional fairs and the North Carolina state fair, and improve and expand the facilities for exhibits at the North Carolina state fair, at any time or times, out of any funds which may be available for such purposes. (1949, c. 829, s. 1.)

§ 106-520.7. Violations made misdemeanor.—Any person who violates any provision of G. S. § 106-520.1 through G. S. § 106-520.6 is guilty of a misdemeanor punishable by a fine or imprisonment in the discretion of the court. (1949, c. 829, s. 1.)

Art. 49. Poultry.

§ 106-539. National poultry improvement plan.—In order to promote the poultry industry of the state, the department of agriculture is hereby authorized to cooperate with the United States department of agriculture in the operation of the national poultry improvement plan. (1945, c. 616, s. 1.)

§ 106-540. Rules and regulations.—The state board of agriculture is hereby authorized to make such regulations as may be necessary, after public hearing following due public notice, to carry out the provisions of said national poultry improvement plan and to promulgate regulations setting up minimum standards for the operation of public hatcheries and to regulate chick dealers and jobbers and to provide standards and to regulate the shipping into this state of baby chicks, turkey poults, and hatching eggs and for the control and eradication of contagious and infectious diseases of poultry. (1945, c. 616, s. 2.)

§ 106-541. Definitions.—For the purpose of this article, a public hatchery shall be defined as any establishment that artificially hatches and sells or offers for sale to the public baby chicks or the young of any domestic fowl under six weeks of age, or hatching eggs, or that does custom hatching. A chick dealer or jobber shall mean any person, firm or corporation that buys baby chicks or turkey poults and sells or offers same for sale. The terms "mixed chicks" or "assorted chicks" shall mean chicks of two or more distinct breeds. The term "crossbred chicks" shall mean chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of distinct breed. (1945, c. 616, s. 3.)

§ 106-542. Hatcheries and chick dealers to obtain permit to operate.—No person, firm or corporation shall operate a public hatchery and no chick dealer or jobber shall operate within this state without first obtaining a permit from the department of agriculture to so operate. Said permit may be cancelled for violation of this article or the regulations promulgated thereunder. Any person who is refused a permit or whose permit is revoked may appeal within thirty (30) days of such refusal or revocation to any court of competent jurisdiction. (1945, c. 616, s. 4.)

§ 106-543. Requirements of national poultry improvement plan must be met.—All baby chicks, turkey poults and hatching eggs sold or offered for sale shall originate in flocks that meet the requirements of the national poultry improvement plan as administered by the North Carolina department of agriculture and regulations issued by

authority of this article for the control of pullorum disease: Provided, that nothing in this article shall require any hatchery to adopt the national poultry improvement plan. (1945, c. 616, s. 5.)

§ 106-544. Shipments from out of state.—All baby chicks, turkey poults and hatching eggs shipped or otherwise brought into this state shall originate in flocks that meet the minimum requirements of pullorum disease control provided for in this article and the regulations issued by authority of this article shall be accompanied by a certificate approved by the official state agency or the livestock sanitary officials of the state of origin, certifying same. (1945, c. 616, s. 6.)

§ 106-545. False advertising.—No public hatchery, chick dealer or jobber shall use false or misleading advertising in the sale of their products. (1945, c. 616, s. 7.)

§ 106-546. Notice describing grade of chicks to be posted.—All hatcheries, chick dealers and jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the department of agriculture describing the grade of chicks approved by the department of agriculture. (1945, c. 616, s. 8.)

§ 106-547. Records to be kept.—Every public hatchery, chick dealer or jobber shall keep such records of operation as the regulations of the department of agriculture may require for the proper inspection of said hatchery, dealer or jobber. (1945, c. 616, s. 9.)

§ 106-548. Fees.—For the purpose of carrying out the provisions of this article and the regulations issued thereunder, the department of agriculture is authorized to collect annually from every public hatchery a fee not to exceed ten dollars (\$10.00) where the egg capacity is not more than fifty thousand (50,000) eggs; twenty dollars (\$20.00) where the egg capacity is fifty thousand and one (50,001) to one hundred thousand (100,000) eggs; and thirty dollars (\$30.00) where the egg capacity is over one hundred thousand (100,000). Chick dealers and jobbers shall pay a fee of three dollars (\$3.00) annually, said fees to be used for the enforcement of this article. The minimum fee for any flock tested shall be five dollars (\$5.00) for one hundred birds or less and shall apply also to flocks that are dropped due to heavy infection or other causes. The fee for the first test shall be four cents (4c) per bird with a charge of two cents (2c) per bird for the second test and one cent (1c) per bird for all subsequent tests, during the same season. (1945, c. 616, s. 10.)

§ 106-549. Violation a misdemeanor.—Any person, firm or corporation who shall wilfully violate any provision of this article or any rule or regulation duly established by authority of this article shall be guilty of a misdemeanor. (1945, c. 616, s. 11.)

Art. 50. Promotion of Use and Sale of Agricultural Products.

§ 106-550. Policy as to promotion of use of, and markets for, farm products; tobacco and cotton excluded.—It is declared to be in the interest of the public welfare that the North Carolina farmers

who are producers of agricultural products, including peanuts, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in co-operation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this article, however, shall not include the agricultural products of tobacco or cotton, with respect to which separate provisions and enactments have heretofore been made. (1947, c. 1018, s. 1; 1951, c. 1172, s. 1.)

Editor's Note.—The 1951 amendment inserted the word "growers" in the ninth line and the word "production" in the twelfth line.

For the comment on this article, suggesting its invalidity as an unlawful delegation of governmental power, see 25 N. C. Law Rev. 396.

§ 106-551. Federal Agricultural Marketing Act.

—The passage by the Seventy-ninth Congress of a law designated as Public Law 733, and more particularly Title II of that act, cited as "Agricultural Marketing Act of 1946", makes it all the more important for producers, handlers, processors and others of specific agricultural commodities to associate themselves in action programs, separately and with public and private agencies, to obtain the greatest and most immediate benefits under the provisions of such law, in respect to research, studies and problems of marketing, transportation and distribution. (1947, c. 1018, s. 2.)

§ 106-552. Associations, activity, etc., deemed not in restraint of trade.—No association, meeting or activity undertaken in pursuance of the provisions of this article and intended to benefit all of the producers, handlers and processors of a particular commodity, shall be deemed or considered illegal or in restraint of trade. (1947, c. 1018, s. 3.)

§ 106-553. Policy as to referenda, assessments, etc., for promoting use and sale of farm products.—It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the state that farmers, producers and growers commercially producing the commodities herein referred to shall be permitted by referendum to be held among the respective groups and subject to the provisions of this article, to levy upon themselves an assessment on such respective commodities or upon the acreage used in the production of the same and provide for the collection of the same, for the purpose of financing or contributing towards the financing of a program of advertising and other methods designed to increase the consumption of and the domestic as well as foreign markets for such agricultural products. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 4; 1951, c. 1172, s. 2.)

Editor's Note.—The 1951 amendment added the last sentence.

§ 106-554. Application to board of agriculture

for authorization of referendum.—Any existing commission, council, board or other agency fairly representative of the growers and producers of any agricultural commodity herein referred to, and any such commission, council, board or other agency hereafter created for and fairly representative of the growers or producers of any such agricultural commodity herein referred to, may at any time after the passage and ratification of this article make application to the board of agriculture of the state of North Carolina for certification and approval for the purpose of conducting a referendum among the growers or producers of such particular agricultural commodity, for commercial purposes, upon the question of levying an assessment under the provisions of this article, collecting and utilizing the same for the purposes stated in such referendum. (1947, c. 1018, s. 5.)

§ 106-555. Action by board on application.—Upon the filing with the board of agriculture of such application on the part of any commission, council, board or other agency, the said board of agriculture shall within thirty days thereafter meet and consider such application; and if upon such consideration the said board of agriculture shall find that the commission, council, board or other agency making such application is fairly representative of and has been duly chosen and delegated as representative of the growers producing such commodity, and shall otherwise find and determine that such application is in conformity with the provisions of this article and the purposes herein stated, then and in such an event it shall be the duty of the board of agriculture to certify such commission, council, board or other agency as the duly delegated and authorized group or agency representative of the commercial growers and producers of such agricultural commodity, and shall likewise certify that such agency is duly authorized to conduct among the growers and producers of such commodity a referendum for the purposes herein stated. (1947, c. 1018, s. 6.)

§ 106-556. Conduct of referendum among growers and producers on question of assessments.—Upon being so certified by the said board of agriculture in the manner hereinbefore set forth, such commission, council, board or other agency shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of such particular agricultural commodity a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this article. Such referendum may be conducted either on a state-wide or area basis. (1947, c. 1018, s. 7.)

§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.—With respect to any referendum conducted under the provisions of this article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least sixty days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers,

and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this article shall exceed one-half of one per cent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. (1947, c. 1018, s. 8.)

§ 106-558. Management of referendum; expenses.—The arrangements for and management of any referendum conducted under the provisions of this article shall be under the direction of the commission, council, board or other agency duly certified and authorized to conduct the same, and any and all expenses in connection therewith shall be borne by such commission, council, board or other agency. (1947, c. 1018, s. 9.)

§ 106-559. Basis of referendum; eligibility for participation; question submitted.—Any referendum conducted under the provisions of this article may be held either on an area or state-wide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or state-wide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and share-croppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. (1947, c. 1018, s. 10.)

§ 106-560. Effect of more than one-third vote against assessment.—If in such referendum with respect to any agricultural commodity herein referred to more than one-third of the farmers and producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1947, c. 1018, s. 11.)

§ 106-561. Effect of two-thirds vote for assessment.—If in such referendum called under the provisions of this article two-thirds or more of the farmers or producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the agricultural commodity covered thereby, then such assessment shall be collected in the manner determined and announced by the agency conducting such referendum. (1947, c. 1018, s. 12.)

§ 106-562. Regulations as to referendum; notice to farm organizations and county agents.—The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural commodity duly certified by the board of agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regu-

lations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the state of North Carolina at least sixty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the state of North Carolina and to each county agent in any county in which such agricultural product is grown. Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied—which assessment in any event shall not exceed one-half of one per cent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted—and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this article. (1947, c. 1018, s. 13.)

§ 106-563. Distribution of ballots; arrangements for holding referendum; declaration of results.—The duly certified agency of the producers of any agricultural product among whom a referendum shall be conducted under the provisions of this article shall likewise prepare and distribute in advance of such referendum all necessary ballots for the purposes thereof, and shall, under rules and regulations promulgated by said agency, arrange for the necessary poll holders for conducting the said referendum; and following such referendum; and within ten days thereafter the said agency shall canvass and publicly declare the result of such referendum. (1947, c. 1018, s. 14.)

§ 106-564. Collection of assessments; custody and use of funds.—In the event two-thirds or more of the farmers eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the three years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the agency conducting the same; and the said assessment so collected shall be paid into the treasury of the agency conducting such referendum, to be used together with other funds from other sources, including donations from individuals, concerns or corporations, and grants from state or governmental agencies, for the purpose of promoting and stimulating, by advertising and other methods, the increased use and sale, domestic and foreign, of the agricultural commodity covered by such referendum. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 15; 1951, c. 1172, s. 3.)

Editor's Note.—The 1951 amendment added the last sentence.

§ 106-565. Subsequent referendum.—In the event such referendum so to be conducted as herein provided shall not be supported by two-thirds or more of those eligible for participation therein and voting therein, then the duly certified agency conducting the said referendum shall have full

power and authority to call another referendum for the purposes herein set forth in the next succeeding year, on the question of an annual assessment for three years. (1947, c. 1018, s. 16.)

§ 106-566. Referendum as to continuance of assessments approved at prior referendum.—In the event such referendum is carried by the votes of two-thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are levied annually for the three years set forth in the call for such referendum, then the agency conducting such referendum shall in its discretion have full power and authority to call and conduct during the third year of such period another referendum in which the farmers and producers of such agricultural commodity shall vote upon the question of whether or not such assessments shall be continued for the next ensuing three years. (1947, c. 1018, s. 17.)

§ 106-567. Rights of farmers dissatisfied with assessments; time for demanding refund.—In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such annual assessment shall have been levied and collected under the provisions of this article, if dissatisfied with said assessment and the results thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such annual assessment so collected from such farmer or producer, provided such demand for refund is made in writing within thirty days from the date on which said assessment is collected from such farmer or producer. (1947, c. 1018, s. 18.)

§ 106-568. Publication of financial statement by treasurer of agency; bond required.—In event of the levying and collection of assessments as herein provided, the treasurer of the agency conducting same shall within thirty days after the end of any calendar year in which such assessments are collected, publish through the medium of the press of the state a statement of the amount or amounts so received and collected by him under the provisions of this article. Before collecting and receiving such assessments, such treasurer shall give a bond in the amount of at least the estimated total of such assessments as will be collected, such bond to have as surety thereon a surety company licensed to do business in the state of North Carolina, and to be in the form and amount approved by the agency conducting such referendum and to be filed with the chairman or executive head of such agency. (1947, c. 1018, s. 19.)

Art. 50A. Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.1. Policy as to joint action of farmers.—It is declared to be in the public interest that North Carolina farmers producing agricultural products of all kinds, including cotton, tobacco, peanuts, soybeans, potatoes, vegetables, berries, fruits, livestock, livestock products, poultry and turkeys, and any other agricultural products having domestic and/or foreign markets, be permitted to act jointly in co-operation with each other in encouraging an expanding program of agricul-

tural research and the dissemination of agricultural research findings. (1951, c. 827, s. 1.)

§ 106-568.2. Policy as to referendum and assessment.—It is further declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of five cents (5c) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts. (1951, c. 827, s. 2.)

§ 106-568.3. Action of Board of Agriculture on petition for referendum.—The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this article. (1951, c. 827, s. 3.)

§ 106-568.4. By whom referendum to be managed; announcement.—The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall arrange for and manage any referendum conducted under the provisions of this article but shall, sixty days before the date upon which it is to be held, fix, determine, and publicly announce in each county the date, hours, and polling places in that county for voting in such referendum, the amount and basis proposed to be collected, the means by which such assessment shall be collected as authorized by the growers and producers, and the general purposes for which said funds so collected shall be applied. (1951, c. 827, s. 4.)

§ 106-568.5. When assessment shall and shall not be levied.—If in such referendum more than one-third of the farmers and producers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such event no assessment shall be levied or collected, but if two-thirds or more of such farmers and producers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment, then such assessment shall be collected in the manner hereinafter provided. (1951, c. 827, s. 5.)

§ 106-568.6. Determination and notice of date, area, hours, voting places, etc.—The three organizations herein designated to hold such referendum shall fix the date, area, hours, voting places, rules and regulations with respect to the holding of such referendum and cause the same to be published in the press of the State at least sixty days before holding such referendum and shall certify such information to the State Commissioner of Agriculture and to each of the farm organizations of the State. Such notice, so published and furnished to the several agencies, shall contain, in addition to the other information herein required, a statement of the amount of annual assessment proposed to be levied, and the purposes for which such assessment shall be applied. (1951, c. 827, s. 6.)

§ 106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results.—The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall prepare and distribute in advance of such referendum all necessary ballots and shall under rules and regulations, adopted and promulgated by the organizations holding such referendum, arrange for the necessary poll holders and shall, within ten days after the date of such referendum, canvass and publicly declare the results thereof. (1951, c. 827, s. 7.)

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.—In the event two-thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of three (3) years under rules, regulations, and methods as provided for in this article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G. S. 106-50.6 and 106-99, 1949 Cumulative Supplement to the General Statutes. The Commissioner shall then remit said five cents (5c) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the Treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the Treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The Treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements

for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of five cents (5c) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers. (1951, c. 827, s. 8.)

§ 106-568.9. Refunds to farmers.—In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such assessment shall have been added and collected under the provisions of this article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the Treasurer of said North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within thirty days from the date of which said assessment is collected from such farmer or producer. (1951, c. 827, s. 9.)

§ 106-568.10. Subsequent referenda; continuation of assessment.—If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for three years. In the event the assessment carried in a referendum by two-thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the three years set forth in the call for such referendum and a new referendum may be called and conducted during the third year of such period on the question of whether or not such assessment shall be continued for the next ensuing three years. (1951, c. 827, s. 10.)

§ 106-568.11. Effect of more than one-third vote against assessment.—If in such referendum called under the provisions of this article more than one-third of the farmers and producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1951, c. 827, s. 11.)

§ 106-568.12. Effect of two-thirds vote in favor of assessment.—If in such referendum called under the provisions of this article two-thirds or more of the farmers or producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the commodities covered thereby, then such assessment shall be collected in the manner prescribed herein (determined and announced by the agencies conducting such referendum). (1951, c. 827, s. 12.)

Art. 51. Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

§ 106-569. **Definitions.**—When used in this article, unless the context or subject matter otherwise requires:

(a) The term or word "antifreeze" shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

(b) The term "person," as used in this article, shall be construed to mean both the singular and plural as the case demands, and shall include individuals, partnerships, corporations, companies and associations. (1949, c. 1165.)

§ 106-570. **Adulteration; what constitutes.**—An antifreeze shall be deemed to be adulterated:

(1) If it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user.

(2) If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

(3) If it consists of, or is compounded with calcium chloride, magnesium chloride, sodium chloride, petroleum distillates or other chemicals or substances in quantities harmful to the cooling systems of internal combustion engines. (1949, c. 1165.)

§ 106-571. **Misbranding; what constitutes.**—An antifreeze shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor; and an accurate statement of quantity of the contents in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package or container. (1949, c. 1165.)

§ 106-572. **Inspection, analysis and permit for sale of antifreeze.**—Before any antifreeze shall be sold, exposed for sale, or stored, packed or held with intent to sell within this state, a sample thereof must be inspected under the supervision of the state chemist in the department of agriculture, created by chapter 106 of the General Statutes. Upon application of the manufacturer, packer, seller or distributor and the payment of a license or inspection fee of twenty-five dollars (\$25.00) for each brand or type of antifreeze submitted, the state chemist shall subject to inspection or analysis the antifreeze so submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the North Carolina state board of agriculture, established by chapter 106 of the General Statutes, and if the said antifreeze is not such a type or kind that is in violation of this article, the commissioner of agriculture shall give the applicant a written license or permit authorizing the sale of such antifreeze in this state for the fiscal year in which the license or inspection fee is paid, which license or permit shall be subject to renewal annually. If the commissioner of agriculture shall, at a later date, find that the antifreeze product or substance to be sold,

exposed for sale or held with intent to sell has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this article, the commissioner of agriculture shall notify the applicant and the license or permit shall be canceled forthwith. No license or permit for the sale of antifreeze in this state shall be issued until application has been made as provided by this article and such samples of the product as may be required by the state chemist to qualify it have been submitted and until the state chemist notifies the commissioner of agriculture that said antifreeze meets the requirements of this article. (1949, c. 1165.)

§ 106-573. **Article to be administered by the commissioner of agriculture.**—The commissioner of agriculture shall administer and enforce the provisions of this article by inspections, chemical analysis, or any other appropriate methods. All quantities or samples of antifreeze submitted for inspection or analysis shall be taken from stocks in this state or intended for sale in this state, or the commissioner of agriculture, through his agents, may call upon the manufacturer or distributor applying for an inspection of antifreeze to supply such sample thereof for analysis. The commissioner of agriculture, through his agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any antifreeze, and the commissioner of agriculture, acting through his agents, may open any box, carton, parcel, package or container holding or containing or supposed to contain any antifreeze and may take therefrom samples for analysis. If it appears that any of the provisions of this article have been violated, the commissioner of agriculture, acting through his authorized agents, inspectors or representatives, is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any antifreeze being sold, exposed for sale or held with intent to sell within this state in violation of this article, until the law has been complied with or said violation has otherwise been legally disposed of. Any antifreeze not in compliance with the provisions of this article shall be subject to seizure upon complaint of the commissioner of agriculture or any of his agents, inspectors or representatives to a court of competent jurisdiction in the area in which said antifreeze is located. In the event the court finds said antifreeze to be in violation of this article, it may order the condemnation of said antifreeze, and the same shall be disposed of in any manner consistent with the rules and regulations of the board of agriculture and the laws of the state: Provided, that in no instance shall the disposition of said antifreeze be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said antifreeze or for permission to process or relabel said antifreeze so as to bring it into compliance with this article. In case any "stop sale" order shall be issued under the provisions of this article, the agents, inspectors or representatives of the commissioner of agriculture shall release the antifreeze so withdrawn from sale when the requirements of the provisions of this article have been complied with and upon

payment of all costs and expenses incurred in connection with the withdrawal. (1949, c. 1165.)

§ 106-574. Rules and regulations.—The board of agriculture shall have authority to establish and promulgate such rules and regulations and standards as are necessary to promptly and efficiently enforce the provisions of this article. The commissioner of agriculture shall administer this article and shall execute all orders, rules and regulations established by the board of agriculture. All authority vested in the commissioner of agriculture by virtue of the provisions of this article may, with like force and effect, be executed by such employees, agents, inspectors and representatives of the commissioner of agriculture as he may, from time to time, designate for such purpose. The commissioner of agriculture may publish or furnish, upon request, a list of the brands and classes or types of antifreeze inspected by the state chemist during the fiscal year which have been found to be in accord with this article and for which a license or permit for sale has been issued, and it shall be lawful for any manufacturer, packer, seller, or distributor of antifreeze to show, by advertising, in any manner, that his or its brand of antifreeze has been inspected, analyzed and licensed for sale by the commissioner of agriculture, acting through the state chemist. It shall be unlawful for any manufacturer, packer, seller, or distributor of antifreeze to advertise, in any manner, that such antifreeze so advertised for sale has been approved by the commissioner of agriculture. (1949, c. 1165.)

§ 106-575. Gasoline and oil inspectors may be designated as agents of the commissioner.—The commissioner of agriculture, with the approval of the commissioner of revenue, may designate any or all of the gasoline and oil inspectors appointed under article 3 of chapter 119 of the General Statutes as agents and representatives of the commissioner of agriculture for the purposes of administering and carrying out the duties imposed by this article. All or any gasoline and oil inspectors designated as agents of the commissioner of agriculture pursuant to this section shall have all of the power and authority that may be delegated to them by the commissioner of agriculture for the enforcement of this article; and when acting in the enforcement of this article, such gasoline and oil inspectors shall be deemed to be agents and representatives of the commissioner of agriculture. (1949, c. 1165.)

§ 106-576. Submission of formula or chemical contents of antifreeze to the commissioner.—When any manufacturer, packer, seller or distributor of antifreeze applies to the commissioner of agriculture for a license or permit to sell antifreeze in this state, the commissioner of agriculture may require such manufacturer, packer, seller or distributor to furnish the state chemist a statement of the formula or contents of such antifreeze, which said statement shall conform to rules and regulations established by the board of agriculture: Provided,

that the statement or formula or contents need not include the inhibitor ingredients if such inhibitor ingredients total less than five percent (5%) by weight of the antifreeze and if in lieu thereof the manufacturer, packer, seller or distributor furnishes the state chemist with satisfactory evidence, other than by disclosure of the inhibitor ingredients, that the said antifreeze is in conformity with the provisions of § 106-570. All statements of contents, formulae or trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the state chemist. All such statements of contents shall not be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the person, firm, association or corporation owning and/or furnishing to the state chemist such statement of contents. (1949, c. 1165.)

§ 106-577. Penalties for violation.—Any person, firm, association or corporation violating or failing to comply with any of the provisions of this article, or any rule, regulation or standard issued pursuant thereto, shall be deemed guilty of a misdemeanor, and upon plea of guilty or conviction shall be punished in the discretion of the court, and each day that any violation of this article shall exist shall be deemed to be a separate offense. Whenever the commissioner of agriculture or his agents or representatives shall discover that any antifreeze is being sold or has been sold in violation of this article, the commissioner of agriculture or his agent or representative may furnish the facts to the solicitor or prosecuting officer of the court having jurisdiction in the area in which such violation occurred, and it shall be the duty of such prosecuting officer or solicitor to promptly institute proper legal proceedings. (1949, c. 1165.)

§ 106-578. Appropriation for enforcement of article.—All license or permit fees provided for in this article shall be collected by the commissioner of agriculture, deposited in the department of agriculture fund, of which the state treasurer is custodian, and shall be expended for the administration and enforcement of this article. The commissioner of agriculture is hereby authorized to employ such number of agents, clerks and experts as may be necessary to administer and effectively enforce all of the provisions of this article. There shall, from time to time, be allotted by the budget bureau from the inspection fees collected under G. S. § 119-18 such sums as may be necessary to administer and effectively enforce the provisions of this article. (1949, c. 1165.)

§ 106-579. Copy of analysis in evidence.—A copy of the analysis made by any chemist of the department of agriculture of antifreeze certified to by him shall be admitted as evidence in any court of the state on trial of any issue involving the merits of antifreeze as defined and covered by this article. (1949, c. 1165.)

Chapter 108. Board of Public Welfare.

Art. 1. State Board of Public Welfare.

Sec.

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108-87 to 108-90. [Omitted.]

Art. 1. State Board of Public Welfare.

§ 108-1. Appointment, term of office, and compensation.—There shall be appointed by the governor seven members who shall be styled "The State Board of Public Welfare," and at least one of such persons shall be a woman.

(1945, c. 43, s. 1.)

Editor's Note.—

The 1945 amendment changed the name of the state

board of charities and public welfare to the state board of public welfare. As only the first sentence was affected by the amendment, the rest of the section is not set out.

Session Laws 1945, c. 43, s. 4 changed the title of the chapter from "Board of Charities" to "Board of Public Welfare."

§ 108-1.1. Change of name in statutes and regulations relating to board.—Wherever in the General Statutes of North Carolina, or in any session law, public, public-local, private or special act of the general assembly, or in any rule or regulation, a duty or obligation is imposed upon the state board of charities and public welfare, or any authority, privilege or power is granted to the state board of charities and public welfare, the same shall be construed as referring to the state board of public welfare. (1945, c. 43, s. 2.)

§ 108-3. Powers and duties of board.

8. To employ and fix the salary of, by and with the approval of the governor, a trained investigator of social service problems who shall be known as the commissioner of public welfare, and to employ such other inspectors, officers, and agents as it may deem needful in the discharge of its duties.

15. To establish standards, provide rules and regulations for the operation of, and to inspect and license boarding homes, rest homes or convalescent homes for persons who are aged or mentally or physically infirm and who are not related or connected by blood or marriage to the applicant for license when a charge is made for such care: Provided said homes care for two or more persons who obtain services from the county public welfare department or are supported in whole or in part by public welfare funds. Such license shall be valid for one year from the date of issuance unless revoked earlier by the board for cause. Such homes shall be under the supervision of the board, and its agents may at any time visit and inspect the homes. Licensing authority shall not apply to any institution established, maintained or operated by any unit of government nor to commercial inns or hotels.

16. To make payments out of State moneys appropriated for the purpose and out of Federal moneys available under the Federal Social Security Act, as amended, to pay the costs of necessary hospitalization in hospitals or health centers duly licensed by the Medical Care Commission of recipients of old age assistance, aid to dependent children, and aid to the permanently and totally disabled, to the extent and in the manner determined from time to time to be feasible by the board pursuant to rules, regulations and standards established by said board: Provided, that the rules, regulations and standards established by the board with respect to necessary hospitalization of recipients of old age assistance, aid to dependent children and aid to the permanently and totally disabled shall be consistent with the principle of obtaining maximum Federal participation under the Federal Social Security Act, as amended. (Rev., ss. 3914, 3915; Code, ss. 2332, 2333; 1868-9, c. 170, s. 3; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; 1937, c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; C. S. 5006.)

The 1945 amendment added subsection 15. The first 1951 amendment inserted the words "and fix the salary of" in the first line of subsection 8 and the second 1951 amendment added subsection 16. As the rest of the section was not affected by the amendment, it is not set out.

Art. 2. County Boards of Public Welfare.

§ 108-11. County welfare boards; appointment; duties.

The respective appointments shall be made on or before the first day of April, one thousand nine hundred and forty-five and shall be effective as of that date. In order to secure overlapping terms of office and to give continuity of policy, the first appointment of the county commission shall be for a term of two years; the first appointment of the state board of public welfare shall be for a term of three years; and the first appointment of the third member shall be for a term of one year; but at the expiration of the terms of the three appointees their successors shall be appointed for terms of three years each. Appointments to fill vacancies shall be for the remainder of the term of office. Prior service on a county welfare board shall not disqualify any person for service under this article, but no member shall be eligible in the future to serve more than two successive terms.

(1945, c. 47.)

Editor's Note.—

The 1945 amendment substituted at the end of the second paragraph the words "serve more than two successive terms" for the words "succeed himself after three successive terms as a member of a county welfare board. Provided, however, that no member shall serve more than six successive years." As the first and third paragraphs were not changed, they are not set out.

§ 108-12. Meetings of the board.—The county welfare boards so appointed shall meet immediately after their appointment and organize by electing a chairman, who shall serve for the term of his appointment, and shall forward notice of said chairman's election and the third member's appointment immediately to the state board, and shall meet at least once a month with the superintendent of welfare and advise with him in regard to problems pertaining to his office.

Members of county boards of public welfare may at the discretion of the board of county commissioners receive a per diem not to exceed five dollars (\$5.00) a day and actual expenses when attending official meetings; any such payments heretofore made are hereby validated. (1917, c. 170, s. 1; 1919, c. 46, s. 4; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; C. S. 5015.)

Local Modification.—Gaston: 1951, c. 694.

Editor's Note.—The 1947 amendment rewrote the last sentence.

§ 108-12.1. Change of name in statutes and regulations relating to board.—Wherever in the General Statutes of North Carolina, or in any session law, public, public-local, private or special act of the general assembly, or in any rule or regulation, a duty or obligation is imposed upon a county welfare board or upon a county board of charities and public welfare, or any authority, privilege or power is granted thereto, the same shall be construed as referring to the county board of public welfare which shall henceforth be the designation of any of said county welfare boards or county boards of charities and public welfare. (1945, c. 43, s. 3.)

Art. 3. Division of Public Assistance.

§ 108-15. Division of public assistance created.

—There is hereby created in the state board of charities and public welfare a division of public assistance, including (a) assistance to aged needy persons, (b) aid to dependent children, and (c) general assistance to other needy persons, as administered under authority of this article. (1937, c. 288, s. 1; 1949, c. 1038, s. 1.)

Editor's Note.—The 1949 amendment inserted subdivision (c).

Part 1. Old Age Assistance.

§ 108-17. Short title.

Cited in *Atlantic Coast Line R. Co. v. Beaufort County*, 224 N. C. 115, 29 S. E. (2d) 201; *Atlantic Coast Line R. Co. v. Duplin County*, 226 N. C. 719, 40 S. E. (2d) 371.

§ 108-19. Definitions.

"Assistance" as used under this title means the money payments to needy aged persons or payments for medical care in behalf of needy aged individuals.

(1951, c. 1098, s. 3.)

Editor's Note.—

The 1951 amendment added the words "or payments for medical care in behalf of needy aged individuals" to the definition of "assistance". As the rest of the section was not affected by the amendment, it is not set out.

§ 108-21. Eligibility.—Assistance shall be granted under this article to any person who:

- (a) Is sixty-five years of age and over;
- (c) Has not sufficient income, or other resources, to provide a reasonable subsistence compatible with decency and health;
- (d) Is not an inmate of any public institution at the time of receiving assistance. An inmate of such institution may, however, make application for such assistance, but the assistance, if allowed, shall not begin until after he ceases to be an inmate.
- (e) Has been a resident of this state for one year immediately preceding the date of his application.

Eligibility of applicants to receive benefits under this title, and the amount of assistance given, and such other conditions of award as it may be necessary to determine shall be determined in the manner hereinafter set out.

The amount of assistance which any person shall receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations made by the state board; and shall be sufficient when added to all other income and support of recipients to provide such person with a reasonable subsistence compatible with decency and health, but not exceeding forty dollars (\$40.00) per month or four hundred eighty dollars (\$480.00) during one year; and of this not more than twenty dollars (\$20.00) per month nor more than two hundred forty dollars (\$240.00) in one year shall be paid out of state and county funds.

Within the limitations of the state appropriation the maximum payment for old age assistance may be increased not in excess of the amount which may hereafter be matched by the federal government. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 753, s. 1; 1945, c. 615, ss. 1, 2; 1947, c. 91, s. 1.)

Editor's Note.—

The 1945 amendment repealed subsection (b) of this section and increased the amounts specified in the next to last paragraph.

The 1947 amendment struck out former subsection (e) and re-lettered former subsection (f) as subsection (e). It also added the last paragraph of the section.

§ 108-22. State old age assistance fund.

In the event that the Federal Social Security Act is amended providing for a larger percentage of contributions to said fund, the provisions of this section shall be construed to accept such additional grants, and the percentages to be provided for old age assistance by the state and counties shall be adjusted proportionately. (1937, c. 288, s. 7; 1943, c. 505, s. 1; 1947, c. 91, s. 2.)

Editor's Note.—The 1947 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Cited in *Atlantic Coast Line R. Co. v. Duplin County*, 226 N. C. 719, 40 S. E. (2d) 371.

§ 108-25. Appropriations not to lapse.—No appropriation made for the purposes of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article: Provided, that if at any time during any fiscal year it appears to be necessary and feasible, the county may transfer with the approval of the state board of allotments and appeal a portion of the amount raised by the county for old age assistance to the county aid to dependent children fund. (1937, c. 288, s. 10; 1945, c. 615, s. 1.)

Editor's Note.—The 1945 amendment added the proviso.

§ 108-30. Application for assistance; determination therein.

Upon the completion of the investigation, the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed forty dollars (\$40.00) per month or four hundred eighty dollars (\$480.00) in one year, and there shall not be paid thereupon out of state and county funds more than twenty dollars (\$20.00) per month or more than two hundred forty dollars (\$240.00) in one year. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in case of other county funds. Within the limitations of the state appropriation the maximum payment for old age assistance may be increased not in excess of the amount which may hereafter be matched by the federal government.

(1945, c. 615, s. 1; 1947, c. 91, s. 3.)

Editor's Note.—

The 1945 amendment increased the amounts specified in the third paragraph; and the 1947 amendment added the last sentence thereto. As the rest of the section was not affected by the amendment it is not set out.

§ 108-30.1. Lien on real property. — There is hereby created a general lien, enforceable as here-

inafter provided, upon the real property of any person who is receiving or who has received old-age assistance, to the extent of the total amount of such assistance paid to such recipient from and after October 1, 1951. Before any application for old-age assistance is approved under the provisions of this article, the applicant shall agree that all such assistance paid to him shall constitute a claim against him and against his estate, enforceable according to law by any county paying all or part of such assistance. Such agreement may be contained in the application signed by the applicant. Any time after the approval of an old-age assistance grant, a statement showing the name of the recipient and the date of approval of the application shall be filed in the office of the clerk of the superior court in each county in which such recipient then owns or later acquires real property. The statement shall be filed in the regular lien docket and shall be cross-indexed showing the name of the county filing said statement as claimant and the name of the recipient as owner. From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the recipient and lying in such county to the extent of the total amount of old-age assistance paid to such recipient from and after October 1, 1951. The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied: Provided, that no action to enforce such lien may be brought more than ten years from the last day for which assistance is paid nor more than one year after the death of any recipient: Provided further, that no execution in enforcement of the lien shall be levied upon any real property, so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient.

The State Board of Public Welfare shall furnish to the county superintendent of public welfare forms to be used which shall contain such information as is required to carry out the provisions of this section and such other information as may be prescribed by the said board.

Each county department of public welfare shall notify all persons shown of record to be recipients of old-age assistance as of the date of notice that all old-age assistance grants paid from and after October 1, 1951, shall constitute a lien against the real property and a claim against the estate of each recipient. The notice may be given by letter mailed to the last known address of each recipient, but the failure to give such notice shall not affect the validity of the lien. (1951, c. 1019, s. 1.)

§ 108-30.2. Claim against estate.—Within one year after the death of any person who has received old-age assistance, reimbursement for which has not been made, the county attorney of the county by or through which such assistance was last paid to such person shall file a claim against his estate. The claim shall be for the total amount of old-age assistance paid to or for the benefit of such recipient from and after October 1, 1951, by or through the State and the several counties thereof; and said claim shall have equal priority in order of payment with the Sixth class under § 28-105 of the General Statutes: Provided, that no such claim shall be satisfied out of any real

property in which the recipient had any legal or equitable interest so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient. (1951, c. 1019, s. 1.)

§ 108-30.3. Funds recovered. — The United States and the State of North Carolina shall be entitled to share in any sum collected under the provisions of this article, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient. The county enforcing the claim as herein provided and any other county within the State which has paid old-age assistance to such recipient shall share proratably in any sum collected. All sums collected shall be deposited in the county old-age assistance fund and a report of such deposit made to the State Board of Public Welfare. All sums to which the United States or the State of North Carolina may become entitled under the provisions of this article shall be promptly paid or credited. All such sums to which the State may become entitled shall be deposited in the State old-age assistance fund and shall become a part of that fund.

All necessary costs incurred in the collection of any claim shall be borne proratably by the United States, the State, and the county in proportion to the share of the sum collected to which each may be entitled: Provided, that neither the United States nor the State shall in any instance be chargeable for cost in excess of the sum received by it from the claim.

The county welfare department shall within 60 days after the death of the person receiving such assistance notify the county attorney of the death of such person. (1951, c. 1019, s. 1.)

§ 108-32. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

In the event of the death of an old age assistance recipient during or after the first day of the month for which a grant was previously authorized by the county welfare board, any old age assistance check or checks payable to such recipient, not endorsed prior to such recipient's death, shall be endorsed by the clerk of the superior court of the county on which the check was drawn and the proceeds thereof paid to the spouse of the deceased recipient. If there is no living spouse, the proceeds of such check or checks shall be applied to the funeral expenses of such deceased recipient. (1937, c. 288, s. 17; 1945, c. 615, s. 1.)

Editor's Note.—The 1945 amendment added the second paragraph.

§ 108-38. Administration expenses.—The state board of allotments and appeal shall annually allocate to the several counties of the state, in accordance with the total amount of benefit payments to be paid in each county for old age assistance therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several coun-

ties, which are necessary to the proper administration of the public welfare program by the several counties, shall be determined by the state board of allotments and appeal upon budgets submitted to said board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, an amount not to exceed one half of such costs shall be allocated and paid to the respective counties by the state board of allotments and appeal from the appropriation made by the state for aid to county welfare administration. The balance of said county administrative expenses shall be paid by the respective counties. The state board of allotments and appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payment of such part of such county's administrative expenses.

The county board of commissioners and the county board of welfare, in joint session, shall determine the number and salary of employees of the county board of welfare, having been advised by the county superintendent of welfare and the state board of charities and public welfare. (1937, c. 288, s. 23; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1.)

Editor's Note.—

The 1945 amendment substituted in line eleven of the first paragraph the words "of the public welfare program" for the words "of this article," and rewrote the first two sentences of the second paragraph.

Cited in *Atlantic Coast Line R. Co. v. Duplin County*, 226 N. C. 719, 40 S. E. (2d) 371.

Part 2. Aid to Dependent Children.

§ 108-44. Short title.

Cited in *Atlantic Coast Line R. Co. v. Beaufort County*, 224 N. C. 115, 29 S. E. (2d) 201; *Atlantic Coast Line R. Co. v. Duplin County*, 226 N. C. 719, 40 S. E. (2d) 371.

§ 108-46. Definitions.

"Assistance" as used under this title means the money payments for any month with respect to or payments for medical care in behalf of a dependent child or dependent children and the needy relative with whom any dependent child or dependent children live if the money payments have been made with respect to such child or children for such month.

(1951, c. 1098, s. 4.)

Editor's Note.—

The 1951 amendment rewrote the definition of "assistance". As the rest of the section was not affected by the amendment, it is not set out.

§ 108-48. Amount of relief.—The maximum amount to be allowed per month under this article shall not exceed eighteen dollars (\$18.00) for one child and twelve dollars (\$12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars (\$65.00), except in extraordinary circumstances in which it appears to the satisfaction of the state board that a total of sixty-five dollars (\$65.00) per month would be insufficient to secure the purpose above set forth. Provided further, that within the limitations of the

state appropriation the maximum amount per child may be increased not in excess of the amount which may hereafter be matched by the federal government. (1937, c. 288, s. 34; 1945, c. 615, s. 1.)

Editor's Note.—The 1945 amendment added the second proviso.

§ 108-49. Dependent children defined.—The term "dependent child" as used in this article shall mean a child under eighteen years of age who is living with his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, adoptive father, adoptive mother, grandfather-in-law, great grandfather, grandmother-in-law, great-grandmother, brother of the half-blood, brother-in-law, adoptive brother, sister of the half-blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in a place of residence maintained by one or more of such relatives as his or their own home; who has resided in the state of North Carolina for one year immediately preceding the application for aid; or who was born within the state within one year immediately preceding the application if the mother has resided in the state for one year immediately preceding the birth, and who has been deprived of parental support or care by reason of the death, physical or mental incapacity or continued absence from the home of a parent, and who has no adequate means of support. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1.)

Editor's Note.—

The 1945 amendment substituted the words "under eighteen years of age" in line three for the words "under sixteen years of age, or under eighteen years of age if regularly attending school," and struck out a former provision relating to making every effort to apprehend the parent.

§ 108-50: Repealed by Session Laws 1945, c. 615, s. 2.

§ 108-51. State aid to dependent children fund.

Cited in Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371.

§ 108-54. Appropriations not to lapse.—No appropriation made for the purpose of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article: Provided, that if at any time during any fiscal year it appears to be necessary and feasible, the county may transfer with the approval of the state board of allotments and appeal a portion of the amount raised by the county for aid to dependent children to the county old age assistance fund. (1937, c. 288, s. 40; 1945, c. 615, s. 1.)

Editor's Note.—The 1945 amendment added the proviso.

§ 108-59. Application for assistance; determination thereon.

Upon the completion of the investigation the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article and shall determine the amount of such as-

sistance and the date on which it shall begin, but such award shall in no case exceed eighteen dollars (\$18.00) for one child and twelve dollars (\$12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars (\$65.00) except in extraordinary circumstances in which it appears to the satisfaction of the state board that a total of sixty-five dollars (\$65.00) per month would be insufficient to secure the purposes above set forth: Provided further, that within the limitations of the state appropriation the maximum amount per child may be increased not in excess of the amount which may hereafter be matched by the federal government. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in the case of other county funds. (1945, c. 615, s. 1.)

Editor's Note.—

The 1945 amendment inserted the second proviso in the third paragraph. As the rest of the section was not affected by the amendment it is not set out.

§ 108-66. Allocation of funds.

Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. (1937, c. 288, s. 52; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1.)

Editor's Note.—

The 1945 amendment added the above proviso at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

§ 108-67. Administration expenses.—The state board of allotments and appeal shall annually allocate to the several counties of the state the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of the public welfare program by the several counties, shall be determined by the state board of allotments and appeal upon budgets submitted to said board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, an amount not to exceed one half of such costs shall be allocated and paid to the respective counties by the state board of allotments and appeal from the appropriation made by the state for aid to county administration. The balance of said county administrative expenses shall be paid by the respective counties.

The state board of allotments and appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice, it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payments of such part of such county's administrative expenses. (1937, c. 288, s. 53; 1941, c. 232; 1943, c. 505, s. 9; 1945, c. 615, s. 1.)

Editor's Note.—

The 1945 amendment substituted in line nine of the first paragraph the words "the public welfare program" for the words "this article," and rewrote the first two sentences of the second paragraph.

Cited in Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371.

Part 3. General Assistance.

§ 108-73.1. Establishment of relief.—The care and relief of all persons who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of state concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to state and county revenues and with due regard for other necessary objects of public expenditure, a state-wide system of general assistance is hereby established, to operate with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such assistance. (1949, c. 1038, s. 2.)

§ 108-73.2. Acceptance of federal grants in aid; part liberally construed.—The state board of public welfare is hereby authorized to accept any grants in aid for general assistance which may be made available to the state by the federal government and the provisions of Part 3 of this article shall be liberally construed in order that the state and its needy citizens may benefit fully from such grants in aid. (1949, c. 1038, s. 2.)

§ 108-73.3. Assistance defined.—Assistance as herein used means money payments to a needy individual or payments for medical care in behalf of such needy individual. (1949, c. 1038, s. 2; 1951, c. 1098, s. 5.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 108-73.4. Eligibility.—Assistance may be granted to any person who:

- (a) Is unable to earn a sufficient income and is without any resources to provide a subsistence compatible with decency and health; and
- (b) Is not an inmate of any public institution at the time of receiving assistance.

Applications for general assistance shall be made to the county superintendent of public welfare who by and with the approval of the county welfare board shall determine whether aid is to be granted and the amount thereof.

The amount of assistance which any eligible person may receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations of the state board of public welfare. In so far as funds will permit, such assistance shall be sufficient when added to all other income and resources to provide such person with a reasonable subsistence compatible with decency and health, but the principle of equitable treatment shall be followed in each county as provided in the rules and regulations of the state board of public welfare. Assistance may be granted to any person or for any purpose coming within the provisions of this

section and the rules and regulations of the state board of public welfare not inconsistent herewith, although such person or purpose may not come within federal requirements governing the use of federal grants in aid for general assistance purposes. Applications for general assistance shall be handled in the manner prescribed by the rules and regulations of the said board. (1949, c. 1038, s. 2.)

§ 108-73.5. State general assistance fund.—A fund shall be created to be known as the "state general assistance fund." This fund shall be created by appropriations made by the general assembly and such grants as may be received from the federal government for this purpose. Such fund shall be used exclusively for assistance to needy persons found to be eligible in accordance with the provisions of Part 3 of this Article and the rules and regulations of the state board of public welfare not inconsistent therewith.

The treasurer of the state of North Carolina is hereby made ex officio treasurer of the state general assistance fund herein established, including therein such grants in aid for general assistance as may be received from the federal government for administration and distribution in this state; and the said treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The treasurer shall keep the funds in a separate account, to be known as the "state general assistance fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other state funds. The said funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the superintendent of public welfare, countersigned by the county auditor, for both payments of grants to recipients and for administrative purposes: Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent, the signature of the chairman of the county welfare board together with that of the county auditor shall be sufficient for the disbursement of such funds. (1949, c. 1038, s. 2.)

§ 108-73.6. Allotment and transfer of federal and state funds to the counties.—Allotments shall be made annually by the state board of allotments and appeal, created by § 108-33, in the manner prescribed in §§ 108-36 and 108-37: Provided, that no participating county shall receive from the state general assistance fund during any fiscal year less than ten per cent (10%) or more than fifty per cent (50%) of the total expenditures for general assistance as herein defined until such time as federal grants in aid for general assistance are available to the state.

When federal funds are available to North Carolina for general assistance, the state board of allotments and appeal shall allot annually to each county from the state general assistance fund any proportion of the total amount to be expended for such purpose that the amount of federal and state funds available will permit: Provided that no county shall receive from such federal and state funds during any fiscal year more than ninety per cent (90%) of the total expenditures for general assistance.

It is the purpose of the general assembly that

the allotments herein provided for shall be used by the counties entitled thereto solely as supplementary funds to increase the general assistance being provided, and no allotment shall be used, directly or indirectly, to replace county appropriations or expenditures.

State and federal funds shall be transferred to the counties as prescribed in § 108-39 of the General Statutes of North Carolina and all provisions of that section shall apply to general assistance funds, except that all funds so transferred shall be deposited in the county general assistance fund. (1949, c. 1038, s. 2.)

§ 108-73.7. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law. (1949, c. 1038, s. 2.)

§ 108-73.8. Accounts and reports from county officers.—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the state board of public welfare in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the state board of public welfare as often as may be deemed necessary. The accounts shall at all times be open to inspection by the state board of public welfare and its authorized auditors, supervisors and deputies. (1949, c. 1038, s. 2.)

§ 108-73.9. Further powers and duties of state board.—The provisions of § 108-28 shall apply to Part 3 of this article. The state board of public welfare is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling and disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1949, c. 1038, s. 2.)

§ 108-73.10. Participation permissive; effect of federal grants.—The general assistance program herein established shall be administered as provided for in the rules and regulations of the state board of public welfare, except that no county shall be granted any allotment from the state general assistance fund nor shall be subject to provisions of Part 3 of this article unless its consent be given in the manner prescribed by the rules and regulations of the state board of public welfare: Provided, that in the event federal general assistance grants shall be made available to the state upon condition that each county thereof participate in the general assistance program, then and in that event all of the provisions of Part 3 of this article shall apply to and become mandatory upon every county. (1949, c. 1038, s. 2.)

Art. 4A. State Boarding Fund for the Aged and Infirm.

§ 108-79.1. State boarding fund established.—The State Board of Public Welfare is hereby authorized, empowered, and directed to establish a fund to be known as the State boarding fund for the aged and infirm, and to adopt rules and regulations under which payments are to be made out of the fund in accordance with the provisions of this article. (1951, c. 90.)

§ 108-79.2. Payments.—From the fund herein established, the State Board of Public Welfare may pay all or part of the cost of maintaining in a duly licensed boarding home any aged or infirm adult person (a) when the State deems it essential to the health or welfare of such person that such boarding home care be provided; and (b) when such person is otherwise eligible to receive public assistance under the old-age assistance program, aid to the permanently and totally disabled program, or the general assistance program; and (c) when the total resources of such person, including any public assistance grants, are not sufficient to provide care in a suitable licensed boarding home. (1951, c. 90.)

§ 108-79.3. Benefits may be in addition to other aid.—Payments may be made from the fund to or for the benefit of a person whether or not such person receives assistance from the State or county, but no payment shall be made from the fund for any purpose except for necessary costs of domiciliary care in a licensed home. (1951, c. 90.)

Art. 5. Regulation of Organizations and Individuals Soliciting Public Alms.

§ 108-80. Regulation of solicitation of public aid for charitable, etc., purposes.—Except as herein-after provided in G. S. § 108-84, no person, organization, corporation, institution, association, agency or co-partnership except in accordance with provisions of this article shall solicit the public whether by mail, or through agents or representatives or other means for donations, gifts or subscriptions of money and/or of gifts of goods, wares, merchandise or other things of value or to sell or offer for sale or distribute to the public anything or object whatever to raise money or to sell memberships, periodicals, books or advertising space or to secure or attempt to secure money or donations or other property by promoting any public bazaar, sale, entertainment or exhibition or by any similar means for any charitable, benevolent, health, educational, religious, patriotic or other similar public cause or for the purpose of relieving suffering of animals unless the solicitation is authorized by and the money or other goods or property is to be given to an organization, corporation, institution, association, agency or co-partnership holding a valid license for such purpose from the state board of public welfare, issued as herein provided. (1939, c. 144, s. 1; 1947, c. 572.)

Editor's Note.—The 1947 amendment rewrote former sections 108-80 to 108-90 to appear as present sections 108-80 to 108-86.

§ 108-81. Application for license to solicit public aid.—Any person, organization, corporation, institution, association, agency, or co-partnership

wishing to secure a license from the state board of public welfare for the purpose of soliciting the public for any of the aforementioned causes shall file a written application with the state board of public welfare on a form furnished by the said board setting forth proof of the worthiness of the cause, chartered responsibility, the existence of an adequate and responsible governing board to administer receipts and disbursements of funds, goods, or other property sought, the need of public solicitation, proposed use of funds sought, and a verified report of the operation of such organization, corporation, institution, association, agency or co-partnership for a fiscal period determined by the said state board, said verified report to show reserve funds and endowment funds as well as receipts and disbursements. (1939, c. 144, s. 1; 1947, c. 572.)

§ 108-82. Issuance of license by state board of public welfare.—If the state board of public welfare after full investigation and careful study of the purpose and functioning of an organization, corporation, institution, association, agency, or co-partnership filing an application for a license to solicit deems such organization, corporation, institution, association, agency or co-partnership a proper one and not inimical to the public welfare and its proposed solicitations to be truly for the purpose set forth in its application and provided for in this article, it shall issue to such organization, corporation, institution, association, agency or co-partnership a license to solicit for its purposes and program for a period not to exceed one year, unless revoked for cause.

The state board of public welfare shall not issue a license to solicit to any such organization, corporation, institution, association, agency or co-partnership which pays or agrees to pay to any individual, corporation, co-partnership or association an unreasonable or exorbitant amount of the funds collected as compensation.

In the event the said board refuses to issue said license, the organization, corporation, institution, association, agency or co-partnership shall be entitled to a hearing before said board provided written request therefor is made within fifteen days after notice of refusal is delivered or mailed to the applicant. All such hearings shall be held in the offices of said board and shall be open to the public. Decisions of said board shall be mailed to the interested parties within ten days after the hearing.

The state board of public welfare before granting or refusing a license as herein provided shall call upon the state commission for the blind, the division of vocational rehabilitation and other divisions of the state department of public instruction, the bureau of labor for the deaf, and the state board of health for advice in any situation or cause in which any of the several state agencies named has an interest or responsibility. (1939, c. 144, s. 1; 1947, c. 572.)

§ 108-83. Solicitors and collectors must have evidence of authority and show same on request.—No person shall solicit or collect any contribution in money or other property for any of the purposes set forth in this article without a written authorization, pledge card, receipt form, or other evidence of authority to solicit for a duly licensed organization, corporation, institution, association,

agency, or co-partnership for which the donation or contribution is made and said evidence of authority must be shown to any person on request. Said evidence of authority must be provided by the organization, corporation, institution, association, agency or co-partnership for which the donation or contribution is solicited or by the agency through which the donation or contribution is collected and distributed. (1939, c. 144, s. 2; 1947, c. 572.)

§ 108-84. Organizations, etc., exempted from article.—The provisions of this article shall not apply to any solicitation or appeal made by any church, or religious organization, school or college, fraternal or patriotic organization, or civic club located in this state when such appeal or solicitation is confined to its membership nor shall the provisions of this article apply to any locally indigenous organization, institution, association or agency having its own office, managing board, committee or trustees or chief executive offices located in or residing in a city or county from publicly soliciting donations or contributions within a city and the county or counties in which said city is located or within the county in which such an organization, institution, association or agency is located and operates; provided that nothing in this article shall apply to any solicitation or appeal by any church for the construction, upkeep, or maintenance of the church and its established organization or for the support of its clergy. (1939, c. 144, s. 2a; 1947, c. 572.)

§ 108-85. Regulation and licensing of solicitation of alms for individual livelihood.—It shall be unlawful for an individual to engage in the business of soliciting alms or begging charity for his or her own livelihood or for the livelihood of another individual upon the streets or highways of this state or through door to door solicitations without first securing a license to solicit for this purpose from the state board of public welfare.

Any individual desiring to engage in the business of soliciting alms or begging charity for his or her own livelihood or for the livelihood of another individual as set forth in the first paragraph of this section shall file a written application for a license on a form or forms furnished by the said board, setting forth his or her own true name and address, his or her correct address or addresses for the past five years, the purpose for which he or she desires to solicit alms, the reason why public solicitation is considered a necessary means to obtain a livelihood or relief from suffering rather than the pursuit of a legitimate trade or the acceptance of benefits provided through the social security measures and funds administered by the federal, state and county governments and any other information which the said board may deem necessary to carry out the provisions of this article. A copy of the license must be carried by the solicitor while soliciting and must be shown upon request.

The carrying and offering for sale of merchandise by the individual soliciting alms or begging charity shall not exempt the individual so soliciting from the provisions of this article. The state board of public welfare shall call upon the several state agencies named in § 108-82 for advice in issuing a license to an individual in accordance with the provisions of this article. (1947, c. 572.)

§ 108-86. Punishment for violation of article; misapplication of funds collected.—Any person who, or any organization, corporation, institution, association, agency or co-partnership which violates any of the provisions of this article or solicits donations and contributions from the public without first applying for and obtaining a license as herein provided shall be guilty of a misdemeanor, and upon conviction shall be punished in case of an organization, corporation, institution, association, agency or co-partnership by a fine of not more than one thousand dollars (\$1,000.00); in the case of an individual the punishment shall be that provided for a misdemeanor.

Any person who, or organization, corporation, institution, association, agency or co-partnership which, after having conducted a solicitation campaign and obtained funds from such solicitation shall wilfully convert or misapply any of said funds from the purposes for which solicited as set out in the application for license to solicit shall be guilty of a felony and shall be punished in the discretion of the court. (1939, c. 144, s. 3; 1947, c. 572.)

§§ 108-87 to 108-90: Omitted by Session Laws 1947, c. 572.

Chapter 109. Bonds.

Sec. Art. 4. Deposit in Lieu of Bond.

109-32. Deposit of cash or securities in lieu of bond; conditions and requirements.

Art. 1. Official Bonds.

§ 109-1. Irregularities not to invalidate.

County A. B. C. Board as Oblige.—The naming of county A. B. C. Board as obligee in bond, rather than state, works no limitation of its character as official bond and affords no escape from its obligations as such. *Jordan v. Harris*, 225 N. C. 763, 36 S. E. (2d) 270, 271.

Art. 4. Deposit in Lieu of Bond.

§ 109-32. Deposit of cash or securities in lieu of bond; conditions and requirements.—In lieu of any written undertaking or bond required by law in any matter, before any court of the state, the party required to make such undertaking or bond may make a deposit in cash or securities of the state of North Carolina or of the United States of America, of the amount required by law or, in the case of fiduciaries, of the amount of the trust, in lieu of the said undertaking or bond and such deposit shall be subject to all of the same conditions and requirements as are provided for in written undertakings or bonds, in lieu of which such deposit is made. (1923, c. 58; 1947, c. 936; C. S. 352(a).)

Editor's Note.—Prior to the 1947 amendment this section related only to deposits of cash. See 25 N. C. Law Rev. 384.

Art. 5. Actions on Bonds.

§ 109-34. Liability and right of action on official bonds.

Sections Construed Together.—This section and § 109-37

allowing damages at twelve per cent on any such recovery, relate to the same subject matter, are part of one and the same statute, and must be construed together. *State v. Watson*, 223 N. C. 437, 27 S. E. (2d) 144.

Remedies against Clerks of Superior Courts.—Our statutes provide two separate and distinct remedies against clerks of the Superior Courts—one in behalf of the injured individual for a specific fund to which he is entitled or on account of a particular wrong committed against him by the officer, as provided in this section; and one in behalf of the new clerk against his predecessor in office to recover possession of records, books, papers and money in the hands of the outgoing clerk by virtue or under color of his office, as provided for in § 2-22. *State v. Watson*, 223 N. C. 437, 27 S. E. (2d) 144.

Cited in *Jordan v. Harris*, 225 N. C. 763, 36 S. E. (2d) 270, following *Dunn v. Swanson*, 217 N. C. 279, 7 S. E. (2d) 563; *Price v. Honeycutt*, 216 N. C. 270, 4 S. E. (2d) 611 and distinguishing *Davis v. Moore*, 215 N. C. 449, 2 S. E. (2d) 366; *Midgett v. Nelson*, 214 N. C. 396, 199 S. E. 393.

§ 109-36. Summary remedy on official bond.

Applied in *State v. Sawyer*, 223 N. C. 102, 25 S. E. (2d) 443.

§ 109-37. Officer unlawfully detaining money liable for damages.

This Section Must Be Considered in Connection with, etc.—

Authority for an individual to sue an officer for money wrongfully detained, as provided for in § 109-34, and this section relate to the same subject matter and are a part of one and the same statute. They must be construed together. *State v. Watson*, 223 N. C. 437, 441, 27 S. E. (2d) 144.

Interest by Way of Damages.—Whether or not the clerk is entitled to the benefits of this section, in a suit against his predecessor, is not now decided; but, granting that he is not so entitled, the law allows interest by way of damages on money wrongfully detained. *State v. Watson*, 223 N. C. 437, 27 S. E. (2d) 144; *State v. Watson*, 224 N. C. 502, 31 S. E. (2d) 465.

Chapter 110. Child Welfare.

Sec. Art. 2. Juvenile Courts.

110-21.1. Jurisdiction of juvenile courts over violations of motor vehicle laws.

110-31.1. Probation officers as members of county welfare staffs.

Art. 4. Placing or Adoption of Juvenile Delinquents or Dependents.

110-50. Consent required for bringing child into state for placement or adoption.

110-52. Consent required for removing child from state.

110-53. [Repealed.]

110-57. Application of article.

Art. 1. Child Labor Regulations.

§ 110-2. Hours of labor.—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after six o'clock in the evening of any day. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gain-

ful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that no girl between sixteen and eighteen years of age shall be so employed, permitted, or allowed to work before six o'clock in the morning or after nine o'clock in the evening of any day; and Provided further, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of § 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under § 95-11: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the state commissioner of labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday; and provided further, that girls between the ages of seventeen and eighteen years may be employed as ticket takers, concession attendants, and cashiers in motion picture theaters up to 10:30 at night under such rules and regulations as the Commissioner of Labor may prescribe. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2; 1951, c. 1187, s. 1.)

Editor's Note.—The 1951 amendment added the last proviso.

Art. 2. Juvenile Courts.

§ 110-21. Exclusive original jurisdiction over children.

Purpose.—

Juvenile courts were created and organized for the purpose of administering this law, and for the original hearing and determination of matters and causes within its scope, and as such were empowered to "make such orders and decrees therein as the right and justice of the case may require," with right of appeal. *In re Prevatt*, 223 N. C. 833, 835, 28 S. E. (2d) 564.

This section imposes upon the court the constant duty to give to each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the state. *In re Morris*, 224 N. C. 487, 492, 31 S. E. (2d) 539.

Section Not Inconsistent with § 17-39.—Original jurisdiction to adjudge a child delinquent or neglected having been conferred on the juvenile court by this section, nevertheless this statute does not repeal § 17-39, and is not inconsistent therewith. No limitation is placed by this statute upon the jurisdiction previously conferred upon the Superior Court by that section to issue writs of habeas corpus and to hear and determine the custody of children of parents separated but not divorced. *In re Prevatt*, 223 N. C. 833, 836, 28 S. E. (2d) 564.

Willful Neglect or Refusal to Support Illegitimate Child.—Where defendant is over sixteen years of age during the time he is charged with willfully neglecting or refusing to support his illegitimate child, the superior court and not the juvenile court has jurisdiction, notwithstanding that conception of the child occurred prior to defendant's six-

teenth birthday. *State v. Bowser*, 230 N. C. 330, 53 S. E. (2d) 282.

Jurisdiction to determine the right of custody of an infant as between persons with whom the infant had been placed with a view to adoption and welfare officers seeking to place the infant with his family, is within the exclusive jurisdiction of the juvenile court. *In re Thompson*, 228 N. C. 74, 44 S. E. (2d) 475.

Exceptions to Jurisdiction in Cases Involving Custody of Child.—The juvenile branch of the superior court has exclusive original jurisdiction in all cases wherein the custody of an infant under sixteen years of age is the subject of the controversy except (1) in cases between undivorced parents living in a state of separation, § 17-39, or (2) where there is an action for divorce, in which a complaint has been filed, pending in this state, § 50-13, or (3) where the parents have been divorced by decree of a court of a state other than North Carolina, § 50-13. *Phipps v. Vannoy*, 229 N. C. 629, 50 S. E. (2d) 906. And see the 1949 amendment to § 50-13 which was intended to give the superior court jurisdiction in all cases where one of the parents is seeking custody. 27 N. C. Law Rev. 452.

Under the 1949 amendment to section 50-13 either parent may institute a special proceeding to obtain custody of his or her child in cases not theretofore provided for by section 50-13 or section 17-39 and this amendment authorizes a special proceeding by the mother of an illegitimate child to obtain its custody from her aunt, with whom she had entrusted the child, and thus restricts the jurisdiction of the Juvenile Court in such instances. *In re Cranford*, 231 N. C. 91, 56 S. E. (2d) 35.

"Controversy" Respecting Custody of Child.—In a proceeding by a father to obtain custody of his child from the parents of his deceased wife, it was contended that the father, being a fit and suitable person, had sole right to the custody of his child as a matter of law, and that therefore a "controversy" respecting the child's custody, such as would confer jurisdiction upon the juvenile court under paragraph 3 of this section, could not arise in the absence of proof of abandonment or other special fact. It was held that this contention was untenable, since the question was one of jurisdiction and not of the father's right to custody, and since the contention was perforce made in the midst of a "controversy." *Phipps v. Vannoy*, 229 N. C. 629, 50 S. E. (2d) 906. See the 1949 amendment to § 50-13.

Controversy between Father and Parents of Deceased Wife.—Under paragraph 3 of this section the juvenile branch of the superior court has exclusive jurisdiction of a proceeding by a father to obtain custody of his child from the parents of his deceased wife, notwithstanding that the custody of the child was awarded to the wife in a divorce action pursuant to the provisions of § 50-13. *Phipps v. Vannoy*, 229 N. C. 629, 50 S. E. (2d) 906. The 1949 amendment to § 50-13 was intended to overrule this case and give the superior court jurisdiction in all cases where one of the parents is seeking custody. 27 N. C. Law Rev. 452.

Voluntary Surrender of Custody to Juvenile Court.—Where the mother of minor children, for the purpose of having their custody given to their paternal grandmother, the father being dead, voluntarily came before the juvenile court and signed a paper turning over the custody of her children to such court, the court obtained jurisdiction during such time as the custody and control of the children is necessary, notwithstanding the absence of the statutory requirements in cases where the juvenile court proceeds directly, and the mother might not thereafter attack on the ground of want of jurisdiction a subsequent order of the juvenile court taking the custody away from the grandmother for change of condition and placing the children in the custody of an institution. *In re Bungarner*, 228 N. C. 639, 46 S. E. (2d) 833.

A court awarding exclusive custody of a minor assumes the obligation to see that its confidence is not abused, and the court is justified in proceeding to that end with an inquiry *ex mero motu* or at the instance of an interested party. *In re Morris' Custody*, 225 N. C. 48, 33 S. E. (2d) 243.

§ 110.21.1. Jurisdiction of juvenile courts over violations of motor vehicle laws.—All jurisdiction heretofore vested in the superior courts by the provisions of G. S. § 20-218.1 is hereby vested in the juvenile courts of the state of North Carolina. (1949, c. 163, s. 2.)

Editor's Note.—Section 4 of the act from which this section was derived made it effective on February 28, 1949.

Former § 20-218.1 referred to in the above section pro-

vided: "No juvenile court or domestic relations court of this state shall have jurisdiction over any offense involving violation of any of the motor vehicle laws or of any of the laws relating to the operation of motor vehicles on the highways of this state when such offense has been committed by a person over fifteen years of age. Any such offense shall be within the jurisdiction of the court or courts which would have jurisdiction if the offender were over sixteen years of age."

§ 110-22. Juvenile courts created; part of superior court; joint county and city courts.—There shall be established in each county of the state a separate part of the superior court of the district for the hearing of cases coming within the provisions of this article. Such part of the superior court shall be called the juvenile court of county.

The clerk of the superior court of each county in the state shall act as judge of the juvenile court in the hearing of cases coming within the provisions of this article, in which cases the child or children concerned therein reside in or are at the time within such county. Proceedings in such cases may be initiated before such judge, and in hearing such cases such judge shall comply with all the requirements and conform to the procedure provided in this article: Provided, the board of commissioners of any county shall have the right in their discretion to cooperate with the governing body of such city in the election of a judge of a juvenile court provided for in § 110-44, which judge when so elected shall perform all the duties, and possess all the powers and jurisdiction conferred by this article upon the clerk of superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article; such judge to be so elected by the joint action of the governing bodies of such city and county shall hold office for the term of one year, and until his successor shall be duly elected, and the county availing itself of the provisions of this section shall pay said judge for services rendered the county (outside of city) such sum as the county commissioners of said county shall deem just and proper. (1919, c. 97, s. 2; Ex. Sess. 1920, c. 85; 1945, c. 186, s. 2; C. S. 5040.)

Local Modification.—Durham: 1945, c. 503.

Editor's Note.—

Prior to the 1945 amendment the proviso to the second sentence of the second paragraph applied only to counties whose county seat contained twenty-five thousand inhabitants or more.

For comment on the 1945 amendment, see 23 N. C. Law Rev. 341.

Cited in *State v. Bowser*, 230 N. C. 330, 53 S. E. (2d) 282.

§ 110-23. Definitions of terms.

The Term "Court."—While the act confers general jurisdiction upon the Superior Court, it will be understood that the term "court" when used in this statute without modification refers to the juvenile court which is therein created as a separate but not independent part of the Superior Court. In *re Prevatt*, 223 N. C. 833, 835, 28 S. E. (2d) 564.

Cited in *In re McGraw*, 228 N. C. 46, 44 S. E. (2d) 349.

§ 110-25. Petition to bring child before court.

While the record in *In re Prevatt*, 223 N. C. 833, 28 S. E. (2d) 564, did not disclose that a written petition to the juvenile court was originally filed by appellant, as provided in this section, it was held that appellant might not be heard to complain of irregularity in this respect, since the proceeding was instituted at his instance, and he was personally present at the hearing.

§ 110-31.1. Probation officers as members of county welfare staffs.—(a) By written agreement

between the judge of the juvenile court and the county superintendent of public welfare, all probation officers of the juvenile court may be regular employees of the county department of public welfare, attached to the staff of the department and responsible directly to the county superintendent of public welfare as chief probation officer of the county. Upon the election or appointment of a judge of the juvenile court who is not a party to any agreement heretofore entered into under this section, a new agreement may be entered into as provided herein.

(b) When such agreement shall have been entered into, probation officers shall be employed and compensated in the same manner as all other employees of the county department of public welfare are employed and compensated. (1947, c. 94.)

§ 110-39. Neglect by parents; encouraging delinquency by others; penalty.

Instruction.—In a prosecution under this section, a charge that defendant would be guilty if he encouraged, aided and abetted the prosecuting witness "in moral delinquency" is error, since this section uses the term "to be adjudged a delinquent" and the two terms are not synonymous. *State v. Bullins*, 226 N. C. 142, 36 S. E. (2d) 915.

§ 110-40. Appeals.—An appeal may be taken from any judgment or order of the juvenile court to the superior court having jurisdiction in the county by the parent or, in case there is no parent, by the guardian, custodian or next friend of any child, or by any adult described in §§ 110-38 and 110-39 of this article on behalf of any child whose case has been heard by the juvenile court. Written notice of such appeal shall be filed with the juvenile court within five days after the issuance of the judgment or order of such court.

On receipt of notice of such appeal the judge of the juvenile court shall, within five days thereafter, prepare, sign, and file with the record of the case a statement of the case on appeal, together with his decision, and notice of the appeal, and exhibit such statement to the parties or their attorneys upon request. If either party excepts or objects to the statement as partial, inadequate, or erroneous he must put his exceptions or objections in writing, and file the original and two copies thereof with the judge of the juvenile court within ten days of the filing by the judge of a statement of case on appeal. The judge of the juvenile court shall forthwith transmit his statement of the case on appeal and any exceptions or objections thereto to the resident judge of the district or to the judge holding the courts of the district.

The judge of the superior court shall on receiving a statement or record of appeal from the juvenile court hear and determine the questions of law or legal inference and the judge shall deliver to the clerk of the superior court of the county in which the action or proceeding is pending his order or judgment. The clerk of the superior court shall immediately notify the judge of the juvenile court of the order or judgment.

Where the appeal is to the superior court upon issues of fact, either party may demand that the same be tried at the first term of said court after the appeal is docketed in said court, and said trial shall have precedence over all other cases except the cases of exceptions to homesteads and the cases of summary ejectment: Provided, that said appeal shall have been docketed prior to the convening of the said court: Provided further, that

the presiding judge may take up for trial in advance any pending case in which the rights of the parties or the public require it. (1919, c. 97, s. 20; 1949, c. 976; C. S. 5058.)

Editor's Note.—The 1949 amendment rewrote this section. For brief comment on the amendment, see 27 N. C. Law Rev. 443.

Effect of Juvenile Court's Adjudication.—Where the juvenile court has by proper proceeding acquired jurisdiction of the parties and of the subject matter of children whose custody is subject to controversy, its adjudication for the welfare of the children must be held effective and binding on the parties, subject to review on appeal. In *re Prevatt*, 223 N. C. 833, 28 S. E. (2d) 564.

§ 110-44. City juvenile courts and probation officers.—Every city in North Carolina where the population was, by the last federal census report, ten thousand or more may maintain a juvenile court, to which is hereby given the powers, duties and obligations of this article to be exercised within their territorial boundaries. Such city juvenile courts shall conduct their business in accordance with the procedure set forth in this article as applying to the county juvenile court. It is hereby made the duty of governing bodies of such cities to make provisions for such courts and bear the expense thereof, either by requiring the recorder to act as a juvenile judge or by the appointment of a separate judge. The governing bodies of such cities shall also appoint one or more assistant probation officers who shall serve within its jurisdiction under the general supervision of the chief probation officer of the county, which chief probation officer of the county is hereby made the chief probation officer of the city court herein provided for. The salary of the juvenile court judge shall be fixed and paid by the governing body of the city, and such governing bodies are hereby given authority to expend such sums from the public funds of the city as may be required to carry this article into effect.

In case it may appear to the governing bodies of such cities herein described that it would be best to allow the county juvenile court to transact the business of the city, they may make such provisions and agreements with the county commissioners for the expense of the joint court as may be agreed upon, and in such event such a city is hereby permitted to make such arrangement in lieu of establishing a city juvenile court. But in case the county commissioners will not agree to such arrangement, then the city may establish a juvenile court, as provided in this section. Provided, that in the event the governing bodies of such cities reach an agreement with the county commissioners, whereby the county juvenile court shall also transact the business of the city juvenile court, the governing bodies of such city and county, by joint resolution, may elect a judge and an assistant judge of the combined court, who may be persons other than the clerk of the superior court, and who shall hold such office for the term of one year, and until their successors shall be duly elected. Such judge and assistant judge, when so elected, shall perform all the duties and possess all the powers and jurisdiction conferred by this article upon the clerk of the superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article. The assistant judge provided for by this section

shall only perform the functions of judge of the combined juvenile court when the regular judge is unavoidably absent, or sick, and no orders shall be entered by him except in such cases. The compensation of the judge and of the assistant judge provided for by this section shall be determined by the county commissioners and paid by such county. The part of said salary that shall be paid by such city shall be determined by agreement between the governing bodies of the two units, as hereinbefore provided for. The authority is also hereby given by this section for the election of an assistant judge of the juvenile court in cases where counties elect to combine with a city juvenile court and let such court transact the joint business of both county and city.

Any town of five thousand population which is not a county seat, and in which there is a recorder's court, may, if deemed advisable and necessary by the governing body, provide for the conduct of a juvenile court within the territorial jurisdiction of such recorder's court: Provided, that the provisions and procedure of this article are fully followed as in case for towns of ten thousand inhabitants. (1919, c. 97, s. 24; 1923, c. 193; 1943, c. 594; 1945, c. 186, s. 1; C. S. 5062.)

Local Modification.—Durham: 1945, c. 503; City of Greensboro: 1949, c. 669.

Editor's Note.—

The 1945 amendment substituted in the first sentence the words "last federal census report" for the words "census of one thousand nine hundred and twenty." Prior to the amendment the maintenance and establishment of a juvenile court was made mandatory by the first and second paragraphs.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 344.

For comment on the 1945 amendment, see 23 N. C. Law Rev. 340.

Art. 4. Placing or Adoption of Juvenile Delinquents or Dependents.

§ 110-50. Consent required for bringing child into state for placement or adoption.—(a) No person, agency, association, institution, or corporation shall bring or send into the state any child for the purpose of giving his custody to some person in the state or procuring his adoption by some person in the state without first obtaining the written consent of the state board of public welfare.

(b) The person with whom a child is placed for either of the purposes set out in subsection (a) of this section shall be responsible for his proper care and training. The board or its agents shall have the same right of visitation and supervision of the child and the home in which it is placed as in the case of a child placed by the board or its agents as long as the child shall remain within the state and until he shall have reached the age of eighteen years or shall have been legally adopted. (1931, c. 226, s. 1; 1947, c. 609, s. 1.)

Editor's Note.—The 1947 amendment rewrote this section.

§ 110-51. Bond required.—The state board of public welfare may, in its discretion, require of a person, agency, association, institution, or corporation which brings or sends a child into the state with the written consent of the board, as provided by § 110-50, a continuing bond in a penal sum not in excess of one thousand dollars (\$1000.00) with such conditions as may be prescribed and such sureties as may be approved by the state board of public welfare. Said bond shall

be made in favor of and filed with the state board of public welfare with the premium prepaid by the said person, agency, association, institution or corporation desiring to place such child in the state. (1931, c. 226, s. 2; 1947, c. 609, s. 2.)

Editor's Note.—The 1947 amendment rewrote the first sentence.

§ 110-52. Consent required for removing child from state.—No child shall be taken or sent out of the state for the purpose of placing him in a foster home or in a childcaring institution without first obtaining the written consent of the state board of public welfare. The foster home or childcaring institution in which the child is placed shall report to the board at such times as the board may direct as to the location and well-being of such child until he shall have reached the age

of eighteen years or shall have been legally adopted. (1931, c. 226, s. 3; 1947, c. 609, s. 3.)

Editor's Note.—The 1947 amendment rewrote this section.

§ 110-53: Repealed by Session Laws 1947, c. 609, s. 4.

§ 110-57. Application of article.—None of the provisions of this article shall apply when a child is brought into or sent into, or taken out of, or sent out of the state, by the guardian of the person of such child, or by a parent, step-parent, grand-parent, uncle or aunt of such child, or by a brother, sister, half-brother, or half-sister of such child, if such brother, sister, half-brother, or half-sister is twenty-one years of age or older. (1947, c. 609, s. 5.)

Chapter 111. Commission for the Blind.

Art. 1. Organization and General Duties of Commission.

Sec.

- 111-6.1. Pre-conditioning center for the adult blind.
111-8.1. Certain eye examinations to be reported to commission.

Art. 2. Aid to the Needy Blind.

- 111-19. When applications for relief made directly to state commission; transfer of residence.
111-27.1. Commission authorized to conduct certain business operations.
111-28.1. Commission authorized to cooperate with federal government in rehabilitation of blind.
111-30. Appointment of guardians for certain blind persons.

Art. 1. Organization and General Duties of Commission.

§ 111-6.1. Pre-conditioning center for the adult blind.—In addition to other powers and duties granted it by law, the North Carolina state commission for the blind is hereby authorized and directed to establish and operate a rehabilitation center for the blind for the purpose of assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.

The commission shall make all rules and regulations necessary for this purpose and is hereby authorized to enter into any agreement or contract, to purchase or lease property both real and personal, to accept grants and gifts of whatsoever nature, and to do all other things necessary to carry out the intent and purpose of such a rehabilitation center.

The state commission for the blind is hereby authorized to receive grants in aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for the North Carolina blind, under the

provisions of the act of congress known as the Barden-Rehabilitation Act (volume fifty-seven, United States Statutes at Large, chapter one hundred and ninety). Blind persons, who have been residents of North Carolina for one year immediately preceding the date of application for rehabilitation services or who show an established intent to reside continuously in this state, may enjoy the benefits of this section, or any other related rehabilitation benefits under the said Barden-Rehabilitation Act. (1945, c. 698; 1951, c. 319, s. 4.)

Editor's Note.—The act inserting this section appropriated from the general funds of the state the sum of fifteen thousand dollars for the purpose of establishing a pre-conditioning center for the adult blind.

The 1951 amendment substituted the word "rehabilitation" in lieu of "pre-conditioning" where it formerly appeared in the first and second paragraphs.

§ 111-8.1. Certain eye examinations to be reported to commission.—Whenever, upon examination at a clinic, hospital or other institution, or elsewhere by a physician, optometrist or other person examining eyes any person is found to have no vision or vision with glasses which is so defective as to prevent the performance of ordinary activities for which eyesight is essential, the physician, the superintendent of such institution or other person who conducted or was in charge of the examination shall within thirty days report the results of the examination to the North Carolina state commission for the blind. (1945, c. 72, s. 3.)

Art. 2. Aid to the Needy Blind.

§ 111-14. Application for benefits under article; investigation and award by county commissioners.—Any person claiming benefit under this article, shall file with the commissioners of the county in which he or she has a legal settlement an application in writing, in duplicate, upon forms prescribed by the North Carolina state commission for the blind, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State of North Carolina and who is actively engaged in the treatment of diseases of the human eye, or by an optometrist, whichever the individual may select, to the effect that the applicant is blind or that his or her vision with glasses is so defective

as to prevent the performance of ordinary activities for which eyesight is essential.

(1951, c. 319, s. 1.)

Editor's Note.—The 1951 amendment inserted in the first sentence the words "or by an optometrist, whichever the individual may select." As the rest of the section was not affected by the amendment it is not set out.

§ 111-15. Eligibility for relief.

(5) Who are not publicly soliciting alms in any part of the state, and who are not, because of physical or mental condition, in need of continuing institutional care. Provided, that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard the first fifty dollars (\$50.00) per month of earned income. (1937, c. 124, s. 4; 1951, c. 319, s. 3.)

Editor's Note.—The 1951 amendment added the proviso at the end of subsection (5). As the rest of the section was not affected by the amendment it is not set out.

§ 111-17. Amount and payment of assistance; source of funds.

Cited in *Atlantic Coast Line R. Co. v. Beaufort County*, 224 N. C. 115, 29 S. E. (2d) 201.

§ 111-19. When applications for relief made directly to state commission; transfer of residence.

Any recipient of aid to the blind who moves to another county in this state shall be entitled to receive aid to the blind in the county to which he has moved, and the board of county commissioners, or its authorized agent, of the county from which he has moved shall transfer all necessary records relating to the recipient to the board of county commissioners, or its authorized agent, of the county to which he has moved. The county from which the recipient moves shall pay the aid to such recipient for a period of three months following such removal, not in excess of the amount paid before removal, and thereafter aid to such recipient shall be paid by the county to which such recipient has moved subject to the rules and regulations of the North Carolina state commission for the blind. (1937, c. 124, s. 8; 1947, c. 374.)

Editor's Note.—The 1947 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

§ 111-21. Disqualifications for relief.—No aid to needy blind persons shall be given under the provisions of this article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing aid for dependent children and/or relief for the aged, and/or aid for the permanently and totally disabled. (1937, c. 124, s. 10; 1951, c. 319, s. 2.)

Editor's Note.—The 1951 amendment added at the end of the section the words "and/or aid for the permanently and totally disabled."

§ 111-27.1. Commission authorized to conduct certain business operations.—For the purpose of assisting blind persons to become self-supporting the North Carolina state commission for the blind is hereby authorized to carry on activities to pro-

mote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The executive budget act shall apply to the operation of such enterprises as to all appropriations made by the state to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day by day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to state funds but shall be supervised by the state commission for the blind. All of the business operations under this law, however, shall be subject to regular audits by the state auditor. (1945, c. 72, s. 2.)

§ 111-28.1. Commission authorized to cooperate with federal government in rehabilitation of blind.—The North Carolina state commission for the blind is hereby authorized and empowered to make the necessary rules and regulations to cooperate with the federal government in the furtherance of the provisions of the act of congress known as the Barden-Rehabilitation Act (Volume fifty-seven, United States Statutes at Large, chapter one hundred and ninety) providing for the rehabilitation of the blind. (1945, c. 72, s. 1.)

§ 111-30. Appointment of guardians for certain blind persons.—If any indigent blind person, who is receiving any moneys available to the needy blind, is unable to manage his own affairs, and this fact is brought to the attention of the clerk of the superior court of the county where said indigent blind person resides by petition of a relative of said blind person, or other interested person, or by the chairman of the county commissioners or by the state commission for the blind, it shall be the duty of the clerk to set a day for hearing the facts in the matter and to notify all interested persons. The indigent blind person shall be present at the hearing in person, or by representation, and the clerk of the superior court shall inquire into his condition. The hearing and inquiry shall be conducted in the manner provided by the general guardianship laws of North Carolina. If, after the hearing, the clerk finds that such indigent blind person is unable to manage his own affairs, it shall be the duty of the clerk to appoint some discreet and solvent person to act as guardian for said indigent blind person to whom said moneys may be paid. No bond shall be required of, or fee paid to, the guardian where the amount of money received does not exceed fifty dollars (\$50.00) per month. Such person so designated shall use and faithfully apply said moneys for the sole benefit and maintenance of such indigent blind person. The person so designated shall give a receipt to the officer disbursing said moneys and the clerk, in his discretion, may require such person to render a periodic account of the expenditure of such moneys. (1945, c. 72, s. 4.)

Chapter 112. Confederate Homes and Pensions.

Art. 1. Confederate Woman's Home.

§ 112-1. Incorporation and powers of association.

—Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Carolina Confederate Soldiers: Provided, however, no such daughters of North Carolina Confederate Soldiers shall be admitted to said home after January 1, 1953.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence until January 1, 1960. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the state, and shall have all powers necessary to this end. (1913, c. 62, s. 1; 1949, c. 121; C. S. 5134.)

Editor's Note.—The 1949 amendment rewrote the last few lines of the first paragraph, and substituted "until January 1, 1960" for the words "for forty years" in the second sentence of the second paragraph.

Art. 2. Pensions.

§ 112-17: Repealed by Session Laws 1945, c. 699, s. 2.

Editor's Note.—

The repealing act was made effective as of Dec. 31, 1944.

§ 112-18. Classification of pensions for soldiers and widows.

Class "A." To all Confederate soldiers not included in § 112-17, who are now disabled from any cause to perform manual labor, twelve hundred dollars (\$1200.00).

Class "B." To such colored servants who went with their masters to the war and can prove their service to the satisfaction of the county and state pension boards, four hundred and fifty-six dollars (\$456.00).

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, six hundred dollars (\$600.00).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January first, eighteen hundred and eighty, and to such widows who were married to such soldiers subsequent to January first, eighteen hundred and eighty, and who are now on the pension rolls, by virtue of previous statutes, three hundred and twelve dollars (\$312.00). Provided, that the state board of pensions upon the recommendation of the county pension board, may add to Class B list of pensions such widows of Confederate veterans who were married to the deceased veterans prior to the year one thousand eight hundred and ninety-nine and who are now more than sixty years of age, as in the judgment of the said state board of pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; 1945, c. 699, s. 1; c. 1051, ss. 1-3; 1949, c. 1158, ss. 1-4; C. S. 5186(j).)

Editor's Note.—The 1945 and 1949 amendments increased the various allowances. As the introductory paragraph was not affected by the amendments it is not set out.

§ 112-34. State payment of burial expenses.

Whenever in any county of this state a Confederate pensioner on the pension roll shall die, and such fact has been determined by the state auditor, the state auditor shall forward to the clerk of the superior court of the county in which such pensioner resided a state warrant in the amount of one hundred dollars (\$100.00), to be paid by the clerk of the superior court of the county in which such pensioner resided to the personal representative, or next of kin of such deceased pensioner to be applied toward defraying the funeral expenses of such deceased pensioner: Provided, that this section shall also apply to pensioners transferred to Old Age Assistance under the provisions of § 112-21: Provided further, that this section shall apply to persons who otherwise would be entitled to pensions but who are not on pension roll at time of death because of being admitted to county home, county institution or state institution. (1939, c. 187, s. 2; 1941, c. 152, s. 4; 1949, c. 1018.)

Editor's Note.—The 1949 amendment added the last provision.

Chapter 113. Conservation and Development.

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- 113-142.1. Selling and replacing boats, etc.; special commercial fisheries equipment fund.

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- 113-144.1. Licenses for service men.
- 113-146. County licenses.
- 113-148. Department to furnish forms; what licenses must show; signature of licensee; licenses to become void on December 31 of year issued.
- 113-152. Licenses to be kept about person of licensees.

Art. 15. Commercial Licenses and Regulations.

- 113-160. [Repealed.]
- 113-164. [Repealed.]
- 113-169. [Repealed.]

Art. 16. Shellfish; General Laws.

- 113-186, 113-187. [Repealed.]
- 113-189. [Repealed.]
- 113-192, 113-193. [Repealed.]
- 113-196. [Repealed.]
- 113-198, 113-199. [Repealed.]
- 113-202. [Repealed.]
- 113-215. [Repealed.]

Art. 16A. Development of Oyster and Other Bivalve Resources.

- 113-216.1. Statement of purpose.

Sec.

- 113-216.2. Powers of board of conservation and development; oyster rehabilitation program.
- 113-216.3. Appropriation for use by division of commercial fisheries.
- 113-216.4. Use of proceeds from licenses, taxes and fees.

Art. 17. Experimental Oyster Farms.

113-217 to 113-219. [Repealed.]

Art. 19. Terrapin.

113-227, 113-228. [Repealed.]

Art. 20. Salt Fish and Fish Scrap.

113-229. [Repealed.]

113-231. [Repealed.]

Art. 21. Commercial Fin Fishing; General Regulations.

113-234 to 113-236. [Repealed.]

113-238 to 113-243. [Repealed.]

Art. 24. Shellfish; Local Laws.

113-266 to 113-269. [Repealed.]

113-269.1. Brunswick: Oyster and clam beds.

113-270 to 113-275. [Repealed.]

Art. 25. Commercial Fin Fishing; Local Regulations.

113-276 to 113-350. [Repealed.]

113-352 to 113-377. [Repealed.]

Art. 26. Marine Fisheries Compact and Commission.

- 113-377.1. Atlantic states marine fisheries compact and commission.
- 113-377.2. Amendment to compact to establish joint regulation of specific fisheries.
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- 113-377.4. Powers of commission and commissioners.
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- 113-377.6. Report of commission to governor and legislature; recommendations for legislative action; examination of accounts and books by comptroller.
- 113-377.7. Appropriation by state; disbursement.

Article 26A. Repeal of Acts.

- 113-277.8. Repeal of certain public, public-local, special and private acts.

Art. 27. Oil and Gas Conservation.**Part I. General Provisions.**

- 113-378. Persons drilling for oil or gas to register and furnish bond.
- 113-379. Filing log of drilling and development of each well.
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- 113-386. Director of production and conservation and other employees; duties of secretary; attorney general to furnish legal services.
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- 113-393. Development of lands as drilling unit by agreement or order of division.
- 113-394. Limitations on production; allocating and prorating "allowables."
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- 113-398. Procedure and powers in hearings by division.
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- 113-404. Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and upon appeal to supreme court.
- 113-405. Introduction of new or additional evidence in superior court; hearing of additional material evidence by division.
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- 113-407. Stay bond.
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- 113-409. Punishment for making false entries, etc.
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- 113-413. Funds for administration.
- 113-414. Filing list of renewed leases in office of register of deeds.

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

Art. 1. Organization and Powers.

§ 113-3. Duties of the department.

Cross References.—See note under § 113-8. For authority of state board of education to convey or lease marsh and swamp lands to department of conservation and development, see §§ 146-99 to 146-101. As to wildlife resources law, see §§ 143-237 to 143-254.

§ 113-5. Appointment and terms of office of board.—On May first, one thousand nine hundred and forty-five, the governor shall appoint fifteen (15) persons to be members of the board of con-

servation and development, five of whom shall serve for a term of office of two years and until their successors are appointed and qualified. Upon the expiration of their term of office, their successors shall be named for a term of six years and until their successors are appointed and qualified. Five of said persons shall be named for a term of four years and until their successors are appointed and qualified. At the end of their term of office, their successors shall be named for a term of six years and until their successors are appointed and qualified. Five of said persons shall be named for a term of six years and until their successors are appointed and qualified. At the end of their term of office, their successors shall be named for a term of six years and until their successors are appointed and qualified. Any vacancy occurring in the membership of said board because of death, resignation, or otherwise shall be filled by the governor for the unexpired term of such member. In making the appointments, the governor shall take into consideration the functions and activities of the board and in selecting the members shall give, as nearly as possible, proportionate representation to each and all of such functions and activities of the department. (1925, c. 122, s. 6; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 1.)

Editor's Note.—The 1945 amendment rewrote this section.

§ 113-6. Meetings of the board.—The said board may meet at least four times each year; one of said meetings to be held in Raleigh during the month of January and one in July at Morehead City, and the other two meetings to be held at a date and place to be fixed by the board, and it may hold such other meetings as may be deemed necessary by the board for the proper conduct of the business of the department. (1925, c. 122, s. 7; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 2; 1947, c. 699.)

Editor's Note.—Prior to the 1945 amendment only two meetings a year were required, and no place of meeting was designated.

The 1947 amendment substituted "may" for "shall" in line two.

§ 113-7. Compensation of Board.—The members of the Board shall receive not more than seven dollars per diem and actual travel expenses while in attendance on Board meetings or while engaged in the business of the department. (1925, c. 122, s. 8; 1927, c. 57, s. 3; 1941, c. 45; 1951, c. 408.)

Editor's Note.—The 1951 amendment raised the per diem from five to seven dollars.

§ 113-8. Powers and duties of the board.

The board may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the department of conservation and development, and pay for same out of any funds appropriated for the department or available unappropriated revenues of the department, when such acquisition is approved by the governor and council of state. The title to any real estate acquired shall be in the name of the state of North Carolina for the use and benefit of the department. (1925, c. 122, s. 9; 1927, c. 57; 1947, c. 118.)

Editor's Note.—The 1947 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Session Laws 1945, c. 524, authorized the maintenance of

one or more smallmouth bass fish hatcheries and sub-rearing stations.

For subsequent law relating to fish, see §§ 143-237 to 143-254.

§ 113-8.1. Application to use waters for irrigation; investigation and approval of plan and survey.—Any person, firm, or corporation utilizing waters of North Carolina taken from the streams, rivers, creeks or lakes of the State in such an amount as to substantially reduce the volume or flow thereof for the purpose of irrigation shall before utilizing this resource in this manner make application to the Director of the Department of Conservation and Development for a permit for such use. Such person, firm, or corporation shall file with the Department of Conservation and Development a proposed irrigation plan and survey. The Director of Conservation and Development is hereby authorized to investigate such a plan as to safety and public interest and to approve plans and specifications and issue permits. (1951, c. 1049, s. 1.)

Art. 1A. Special Peace Officers.

§ 113-28.1. Designated employees commissioned special peace officers by governor.—Upon application by the director of the department of conservation and development, the governor is hereby authorized and empowered to commission as special peace officers such of the employees of the department of conservation and development as the director may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of state parks, lakes, reservations and other lands or waters under the control or supervision of the department of conservation and development. Such employees shall receive no additional compensation for performing the duties of special peace officers under this article. (1947, c. 577.)

§ 113-28.2. Powers of arrest.—Any employee of the department of conservation and development commissioned as a special peace officer shall have the right to arrest with warrant any person violating any law, rule or regulation on or relating to the state parks, lakes, reservations and other lands or waters under the control or supervision of the department of conservation and development, and shall have power to pursue and arrest without warrant any person violating in his presence any law, rule or regulation on or relating to said parks, lakes, reservations and other lands or waters under the control or supervision of the department of conservation and development. (1947, c. 577.)

§ 113-28.3. Bond required.—Each employee of the state department of conservation and development commissioned as a special peace officer under this article shall give a bond with a good surety, payable to the state of North Carolina in a sum not less than one thousand dollars (\$1,000.00), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the insurance commissioner, and copies of the same, certified by the insurance commissioner, shall be received in evidence in all actions and proceedings in this state. (1947, c. 577.)

§ 113-28.4. Oaths required.—Before any employee of the department of conservation and development commissioned as a special peace officer shall exercise any power of arrest under this article, he shall take the oaths required of public officers before an officer authorized to administer oaths. (1947, c. 577.)

SUBCHAPTER II. STATE FORESTS AND PARKS.

Art. 2. Acquisition and Control of State Forests and Parks.

§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States.—The Governor of the State is authorized upon recommendation of the Board of Conservation and Development to accept gifts of land to the State, the same to be held, protected, and administered by said board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Board of Conservation and Development shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The State Board of Conservation and Development shall also have the power to acquire by condemnation under the provisions of chapter forty, such areas of land in different sections of the State as may in the opinion of the Department of Conservation and Development be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State Park activities with which the Department of Conservation and Development has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this sentence can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this sentence shall not be exercised. The Attorney General of the State is directed to see that all deeds to the State for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made. Such State forests shall be subject to county taxes assessed on the same basis as are private lands, to be paid out of money in the State treasury not otherwise appropriated. The Department of Conservation and Development of the State of North Carolina in lieu of payment to any county of the ad valorem taxes provided for above is authorized and empowered in its discretion to

pay to any county in which is located any State forest, as a severance tax, such percentage or part of the net proceeds of revenues received and collected by such said Department, as may be determined by them, and as agreed upon by them and the board of county commissioners of any county in which such State forest is located, as shall be approximately equal to the ad valorem taxes levied on the property at the time such property was acquired by the State from the cutting and removal of timber and pulpwood from State forests located in the county to which the payment is made. Such payments can be made to such counties on lands owned by the State and used for State forests, or lands leased by the State from which it has the right to cut and remove such timber and pulpwood: Provided, if removed from any State forest leased or acquired from the federal government, the terms of the lease or instrument of acquisition from the federal government pertaining to such matters shall be in all respects complied with. The Department of Conservation and Development is required to determine by resolution adopted by them, and as agreed upon by them and the board of county commissioners of any county in which there is located any leased State forest, the years which such severance taxes in lieu of ad valorem taxes shall be paid and be in effect, notice of which shall be given to the county or counties concerned therein prior to the first day of January of the year such severance taxes shall be substituted for such ad valorem taxes.

(1951, c. 443.)

Local Modification.—Swain: 1951, c. 443.

Editor's Note.—

The 1951 amendment added the last three sentences to the first paragraph. As the second paragraph was not changed by the amendment it is not set out.

Public Acts 1941, c. 118, s. 2, excluding Stokes county from the application of the 1941 amendment was repealed by Session Laws 1945, c. 407.

§ 113-35. State timber may be sold by department of conservation and development; forest nurseries; control over parks, etc.; operation of public service facilities; concessions to private concerns.

The department may construct and operate within the state forests, state parks, state lakes and any other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of same; it may also charge and collect reasonable fees for

(a) The operation and use of such boats or other craft on the surface of state lakes as may be permitted under its own regulations,

(b) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on state lakes under its own regulations,

(c) Hunting privileges on state forests and fishing privileges in state forests, state parks and state lakes, provided that such privileges shall be extended only to holders of bona fide North Carolina hunting and fishing licenses, and provided further that all state game and fish laws and regulations are complied with.

The department may also grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the board of conservation and

development shall deem to be in the public interest. The department may make reasonable rules for the regulations of the use by the public of the public service facilities and conveniences herein authorized which regulations shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not exceeding thirty days. (1931, c. 111; 1947, c. 697.)

Editor's Note.—The 1947 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Art. 3. Private Lands Designated as State Forests.

§ 113-48. State forest rangers appointed.—The Governor shall appoint at his discretion, with the approval of the commissioners of the county wherein a State forest is situated, as State forest rangers such a man or men over twenty-one years of age as may be designated for appointment by the owner or owners of such State forest. Such State forest rangers are to receive no compensation other than that which the owner or owners of the State forest may pay to them. (1909, c. 89, s. 4; 1951, c. 575; C. S. 6130.)

Editor's Note.—The 1951 amendment substituted "rangers" for "wardens".

§ 113-49. Powers of State forest rangers.—The State forest rangers may make arrest on sight, without warrant, for any criminal offense, as provided in the chapter on Criminal Law for setting fire to woods, for camp-fires, for hunting on lands without permission of the owner, for malicious injury to real property, for cutting or removing timber from the land of another, for trespass on land after being forbidden, or for other crime relating to real estate committed within the State forest. They shall safeguard against trespass, and notably against fire, in the State forest for which they have been appointed; and, as far as the enforcement of the provisions of this article is concerned, the State forest rangers shall have all the powers, privileges, and protection otherwise had by sheriffs under any law now in force. (1909, c. 89, s. 5; 1951, c. 575; C. S. 6131.)

Editor's Note.—The 1951 amendment substituted "ranger" and "rangers" for "warden" and "wardens".

Statuted in Alexander v. Lindsey, 230 N. C. 663, 55 S. E. (2d) 470.

Art. 4. Protection against Forest Fires.

§ 113-52. State forester and forest rangers.—The forester of the Department of Conservation and Development, who shall be called State forester, and shall be ex officio State forest ranger, may appoint, with the approval of the Board of Conservation and Development, one county forest ranger and one or more deputy forest rangers in each county of the State in which after careful investigation the amount of forest land and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization. (1915, c. 243, s. 2; 1925, c. 106, s. 1, c. 122, s. 22; 1927, c. 150, s. 1; 1935, c. 178, s. 1; 1951, c. 575; C. S. 6134.)

Editor's Note.—

The 1951 amendment substituted "ranger" and "rangers" for "warden" and "wardens".

§ 113-53. Duties of State forester.—The State forester, as the State forest ranger, shall have

supervision of forest rangers, shall instruct them in their duties, issue such regulations and instructions to all forest rangers as he may deem necessary for the purposes of this article, and cause violations of the laws regarding forest fires to be prosecuted. (1915, c. 243, s. 3; 1925, c. 106, s. 1; 1927, c. 150, s. 2; 1951, c. 575; C. S. 6135.)

Editor's Note.—The 1951 amendment substituted "ranger" and "rangers" for "warden" and "wardens".

§ 113-54. Duties of forest rangers; payment of expenses by State and counties.—Forest rangers shall have charge of measures for controlling forest fires; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the state forester; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the state forester, and shall perform such other acts and duties as shall be considered necessary by the state forester for the protection of the forested area of each of the counties within the state from fire. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the state forester; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the state forester shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the state forester. Appropriations made by a county for this coöperative forest fire control work are not to replace state and federal funds which may be available to the state forester for the work in said county, but are to serve as a supplement thereto. (1915, c. 243, s. 4; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; 1943, c. 660; 1947, c. 56, s. 1; 1951, c. 575; C. S. 6136.)

Editor's Note.—

The 1947 amendment rewrote this section.

The 1951 amendment substituted "rangers" for "wardens".

§ 113-55. Powers of forest rangers to prevent and extinguish fires.—Forest rangers shall prevent and extinguish forest fires and enforce all statutes of this State now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest ranger may arrest, without a warrant, any person or persons taken by him in the act of violating any of the laws for the protection of forests and woodlands, and bring such person or persons forthwith before a justice of the peace or other officer having jurisdiction, who shall proceed without delay to hear, try, and determine the matter. During a season of drought the State forester may establish a fire patrol in any district, and in case of

fire in or threatening any forest or woodland the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or his deputies may summon any male resident between the ages of eighteen and forty-five years to assist in extinguishing fires, and may require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than five dollars nor more than fifty dollars. No action for trespass shall lie against any forest ranger or person summoned by him for crossing or working upon lands of another in connection with his duties as forest ranger. (1915, c. 243, s. 6; 1925, c. 106, ss. 1, 2; 1925, c. 240; 1927, c. 150, s. 4; 1951, c. 575; C. S. 6137.)

Editor's Note.—The 1951 amendment substituted "ranger" and "rangers" for "warden" and "wardens".

§ 113-56. Compensation of forest rangers.—Forest rangers shall receive compensation from the board of conservation and development at a reasonable rate to be fixed by said board for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in fighting or extinguishing any fire, according to an itemized statement to be rendered the state forester every month, and approved by him. Forest rangers shall render to the State forester a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the State forester. If said bill be duly approved by the State forester, it shall be paid by direction of the Board of Conservation and Development out of any funds provided for that purpose. (1915, c. 243, s. 7; 1924, c. 60; 1925, c. 106, ss. 1, 3, c. 122, s. 22; 1947, c. 56, s. 2; 1951, c. 575; C. S. 6138.)

Editor's Note.—The 1947 amendment struck out the words "not to exceed the sum of thirty cents per hour" formerly appearing after the word "board" in line three of the first sentence.

The 1951 amendment substituted "rangers" for "wardens".

§ 113-59. Cooperation between counties and state in forest fire protection.—The board of county commissioners of any county are hereby authorized and empowered to coöperate with the department of conservation and development in the protection from fire of the forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in § 113-54. (1921, c. 26; 1925, c. 122, s. 22; 1945, c. 635; C. S. 6140(a).)

Editor's Note.—The 1945 amendment struck out the words "in their discretion" formerly appearing after the word "empowered" in line three. It also inserted the words "their control such amount as is provided in § 113-54" in lieu of the last ten lines of the section as formerly appearing.

§ 113-60. Instructions on forest preservation.—It shall be the duty of all district, county, township wardens, and all deputy rangers provided

for in this chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and Federal forestry agencies touching or dealing with forest fires and forest preservation.

It shall be the duty of the various rangers herein mentioned under the direction of the State Forester, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do. (1925, c. 61, s. 3; 1951, c. 575.)

Editor's Note.—The 1951 amendment substituted "rangers" for "wardens".

Art. 6. Coöperation for Development of Federal Parks, Parkways and Forests.

§§ 113-78 to 113-81: Repealed by Session Laws 1947, c. 422, §§ 1, 9.

As to transfer of properties and interests formerly held by the committee established under the repealed section, see § 143-255.

Art. 6A. Forestry Services and Advice for Owners and Operators of Forest Land.

§ 113-81.1. **Authority to render scientific forestry services.**—The North Carolina department of conservation and development is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. (1947, c. 384, s. 1.)

§ 113-81.2. **Services under direction of state forester; compensation; when services without charge.**—The administration of the provisions of this article shall be under the direction of the state forester. The state forester, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products, by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

For such designating, measuring or estimating services the state forester may make a charge, on behalf of the department of conservation and de-

velopment, in an amount not to exceed five per cent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the state forester of a statement of such charges, the landowner or operator or his agent shall make payment to the state forester within thirty days.

In those cases where the state forester deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forest lands within the state, and to establish practical demonstrations of said principles. (1947, c. 384, s. 2.)

§ 113-81.3. **Deposit of receipts with state treasury.**—All monies paid to the state forester for services rendered under the provisions of this article shall be deposited into the state treasury to the credit of the department of conservation and development. (1947, c. 384, s. 3.)

SUBCHAPTER III. GAME LAWS.

Art. 7. North Carolina Game Law of 1935.

§ 113-82. Title of article.

For subsequent law affecting this subchapter, see §§ 143-237 to 143-254.

§ 113-91. Powers of commissioner.

(d) To Execute Warrants. The commissioner and each of his deputies shall have power to execute all warrants issued for violation of this article, and to serve subpoenas issued for examination, investigation, or trial of offenders against any of the provisions of this article; to make search, after having first obtained proper warrant therefor, of any place or thing which such deputies have cause to believe contains wild birds or animals, or any part thereof, or the nest or eggs of birds possessed in violation of law; to seize wild birds or animals, or parts thereof, or nests, or eggs of birds killed, captured, or possessed in violation of law or showing evidence of illegal killing; to arrest without warrant any persons committing a violation of this article in his presence, and to take such person immediately before a court having jurisdiction for trial or hearing; and to exercise such other powers of peace officers in the enforcement of the provisions of this article, or of judgments obtained for violation thereof, as are not herein specifically conferred.

(e) To Dispose of Seized Game and Devices. All game birds and the edible portions of game animals seized under the provisions of this article shall be disposed of by the commissioner, or under his direction, by gift to hospitals, charitable institutions or almshouses in the county taken within the State. Non-game birds or parts thereof and the plumes or skins of wild birds or birds of foreign species shall be disposed of by the commissioner by gift to scientific educational institutions within the state, or may be retained by him for use of the board, or in his discretion they may be destroyed. The commissioner shall take a receipt from the donee for any such gift, and file such receipt in his office, and he shall keep a permanent record of such gifts. The heads, antlers, horns, hides, skins, or feet, or parts of any game or fur-bearing animal, seized under the provision of this article, if the person from whom the same

were seized is convicted of violating any of the provisions of this article, or if the owner thereof is unknown, may be sold for cash by the commissioner, or under his direction, at public auction to the highest bidder. Notice of the time and place of such sale, together with a description of the articles to be sold, shall be given by the commissioner or under his direction in such manner as he may determine to be best calculated to bring the best price therefor: Provided, that if the property seized is perishable, that same may be disposed of by the commissioner immediately. The commissioner or his deputies authorized to make the sale shall issue to the purchaser a certificate stating that the purchaser has the legal right to be in possession of the articles bought, and anyone so acquiring said article or articles from the state, other than the person from whom they were seized, shall have the right to possess the same. If the person from whom any of said articles were seized be acquitted of the charge of violating any of the provisions of this article, the article so seized shall be returned to him. It shall be, and is hereby made, the duty of each deputy to make a full and complete report to the commissioner of all property by him confiscated because of a violation of the game laws of this state, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The commissioner shall keep in his office a permanent record showing all property confiscated by him or any of his deputies, and the disposition made thereof under the provisions of this article.

(f) To Seize Certain Devices in Certain Cases. In all cases of violation of any law relating to the unlawful taking of, or unlawful attempt to take any animals, birds, or fish, during the hours after sunset and before sunrise; or taking of or attempt to take, without a permit, deer or wild turkeys in closed season; or the unlawful taking of any doe deer; or the taking of or attempt to take any animals, birds or fish by means or use of dynamite or other explosive; or by the use of any silencer on any weapon; or by the unlawful use of any artificial light, or by means of any trap, net, snare, or other device, the use of which in taking or attempting to take animals, birds, or fish, is prohibited by law; or in case of transportation of game or game fish illegally so taken; or the unlawful taking or transportation of any doe deer; or in case of the unlawful sale of game or game fish, whether taken legally or illegally, all officers, whose duty it is to enforce the game and game fish laws, are hereby empowered to seize all devices, instruments, weapons, air and water craft, and vehicles used in the unlawful taking of or unlawful attempt to take animals, birds, or fish, at the times or by the means herein mentioned, or used in the transportation of any birds, animals, or fish so taken, or used in the unlawful taking or transportation of any doe deer, or used in the unlawful sale of game or game fish, whether taken legally or illegally. The devices, instruments, weapons, craft, and vehicles so seized shall be delivered to the sheriff of the county in which such offense is committed, or placed under said sheriff's constructive possession, if delivery of actual possession is impracticable; and the same shall be held by said sheriff pending the trial of the person or persons arrested for any of the offenses herein mentioned;

and upon conviction of such person or persons of any of said offenses, the court may in its discretion, and subject to the rights of any third person in the property seized, adjudge the property so seized forfeited, and order the same sold in the manner provided by law for the sale of personal property under execution; the net proceeds of such sale shall be paid into the school fund of said county as other fines and forfeitures; the forfeiture and sale of such property when ordered shall be in addition to such fine or imprisonment as may be imposed by the court.

(g) To Seize Weapons and Devices to Be Used in Evidence. At the time of making arrests for any violation of any law relating to the unlawful taking of or unlawful attempt to take animals, birds, or fish, the officer making the arrest is hereby empowered to seize any weapon or device unlawfully used in the violation for which the arrest is made; the weapons or devices so seized shall be delivered to the sheriff of the county in which the offense is committed, to be held and used in evidence for the state upon the trial of the person or persons arrested for such violation. After the trial, any weapon or device so seized shall be returned to the owner thereof unless the offense shall be one of the offenses mentioned in subsection (f) hereof, in which case the same may be returned to the owner thereof in such manner as the court may direct, unless the same be adjudged forfeited and ordered sold by the court upon conviction of the owner thereof for one of the offenses mentioned in said subsection (f) hereof.

(h) Whenever any devices, instruments, weapons, air or water craft, or vehicles are seized and placed in the possession of the sheriff pursuant to subsections (f) or (g) of this section, any person who establishes ownership in any such property to the satisfaction of the court or the sheriff shall be entitled to possession of the same upon furnishing the sheriff a bond in the amount of the value of such property, as fixed by the sheriff, conditioned on such person's producing such property in court on the day of the trial for the offense with respect to which such property was seized. (1935, c. 486, s. 8; 1949, c. 489.)

Editor's Note.—The 1949 amendment struck out of subsection (d) the former provision relating to seizure and confiscation of devices illegally used in taking wild birds or animals, and rewrote the sentence of subsection (e) relating to return of seized devices to acquitted persons. Subsections (f), (g) and (h) are new with the amendment. As the rest of the section was not affected by the amendment only subsections (d) through (h) are set out.

§ 113-95. Licenses required.—No person shall at any time take any wild animals or birds without first having procured a license as provided by this article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this state, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the commissioner, game protectors and such other persons as the commissioner may authorize in writing:

License Fees

Non-resident hunting license	\$15.75
State resident hunting license	3.10
Combination hunting and fishing license ...	4.10
County hunting license	1.10

Said applicant, if a resident of this state, shall pay to the officer or person issuing the license the sum of one (\$1.00) dollar as a license fee, and the sum of ten (10c) cents as a fee to the officer or person, other than the commissioner, for issuing the same, and shall obtain a county resident hunting license, which shall entitle him to take game birds and animals in the county of his residence, or shall pay to the officer or person issuing the license the sum of three dollars (\$3.00) as a license fee and the sum of ten (10c) cents as a fee to the officer or person other than the commissioner for issuing the same and shall obtain a resident state hunting license, which shall entitle him to take game birds and animals in any county of the state at large, as authorized by this article. All persons who have lived in this state for at least six months immediately preceding the making of such application shall be deemed resident citizens for the purposes of this article. Said applicant, if a non-resident of this state, or a resident for less than six months, or an alien, shall pay to the officer or person issuing the license fifteen dollars and fifty cents (\$15.50) as a license fee and the sum of twenty-five (25c) cents as a fee to the officer or person other than the commissioner for issuing the same and shall obtain a non-resident hunting license, which shall entitle him to take game birds and game animals as authorized by this article. The commissioner is hereby authorized and empowered to issue combination licenses for hunting and fishing which said combination license may be for an amount less than the total of the hunting and fishing license when purchased separately. For a state resident hunting and fishing license the applicant shall pay to the officer or person issuing the license the sum of four (\$4.00) dollars as a license fee and ten (10c) cents as a fee for issuing same, which shall entitle him to hunt and fish in any county of the state at large according to the law: Provided, that twenty-five cents (25c) of the fee received for the sale of each resident state hunting license, each nonresident hunting license, and each state resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina wildlife resources commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25c) of each state fee herein described shall be expended by such commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina wildlife resources commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

(1945, c. 617; 1949, c. 1203, s. 1.)

Editor's Note.—The 1945 amendment made changes in the

fees specified under the heading "License Fees" and in the paragraph following such heading. It also added the proviso at the end of the paragraph and struck out a former proviso relating to Northampton county. The 1949 amendment rewrote the latter part of the second paragraph. As the last two paragraphs were not affected by the amendments they are not set out.

For temporary act authorizing resident members of armed forces to hunt without license, see Session Laws 1945, c. 647.

Use of Unexpended Funds.—Session Laws 1949, c. 1203, s. 3, provides that fifty per cent of the fund which has heretofore accumulated for the purchase, lease, development, and management of lands and waters, pursuant to §§ 113-95 and 113-144, and remains unexpended, may be expended by the North Carolina wildlife resources commission, in its discretion, to expand, enlarge and make more effective the work of the education and enforcement divisions of the commission.

§ 113-95.1. Licenses for service men.—All members of the armed forces of the United States stationed at a military facility in North Carolina shall be required to meet State hunting license requirements, as provided by this article, on all land within the State including land under jurisdiction of the armed forces; provided, however, that any member of the armed forces who is a nonresident of North Carolina, and who is assigned to active duty at a military facility in North Carolina, shall be entitled to purchase a resident State hunting license without regard to State residence requirements. (1951, c. 1112, s. 1.)

§ 113-101. Bag limits.—It shall be unlawful to take a greater number of each species of birds or animals per day or per season than is enumerated in the following table. The Board of Conservation and Development may alter these bag limits as changes in the supply of wild life may justify.

	Per Day	Per Season
Bear	No limit	No limit
Deer	1	3
Mink, Muskrat, Otter	No limit	No limit
Opossum, Raccoons	No limit	No limit
Quail	10	150
Rabbit	No limit	No limit
Squirrel	10	No limit
Turkey	1	3
Ruffed Grouse	2	10

Woodcock—Federal regulations.

Dove, Ducks, Geese, Brant and other migratory waterfowl—Federal regulations.

Snipe, Sora, Marsh Hens, Rails, Gallinules—Federal regulations.

Wildcat, Weasel and Skunk—No limit.

Fox—County regulations.

Game birds and game animals lawfully taken may be possessed during the open season therefor and the first ten (10) days next succeeding the close of such open season, but a person may not have in possession at any one time more than two (2) deer, two (2) wild turkeys and two days' bag limit of other game animals or game birds.

Notwithstanding any other provisions of this section or any other section of law, it shall not be unlawful for any person to possess game birds and game animals for a period longer than ten (10) days next succeeding the close of the open season during which such birds or animals were lawfully taken, provided a written declaration of the kinds and amounts of birds or animals so possessed is filed with the county game and fish protector within ten (10) days of the close of the season during which such birds or animals were taken, but the

amount and kinds of such birds and animals possessed at any one time shall not exceed the limitations imposed by law on the possession of any such birds or animals.

The bag limit, possession limit and open seasons on dove and all other migratory birds and wild fowl shall be the same as that prescribed by the United States biological survey legislation irrespective of bag limits, possession limits and seasons set forth by the North Carolina Game Law. (1935, c. 486, s. 17; 1949, c. 1205, s. 1.)

Editor's Note.—The 1949 amendment inserted the next to the last paragraph.

§ 113-102. Protected and unprotected game.

3. No person shall take squirrels at any time in any public park. It shall be unlawful at any time to buy, or sell, rabbits or squirrels for the purpose of resale. Rabbits may be box-trapped or hunted without gun at any time. The setting of steel traps for bear is unlawful. Foxes may be taken with dogs only, except during the open season, when they may be taken in any manner. It shall be unlawful at any time to take any wild deer while swimming or in water to its knees. (1935, c. 486, s. 18; 1949, c. 1205, s. 2.)

Editor's Note.—The 1949 amendment rewrote the second sentence of subsection 3. As the rest of the section was not changed, only this subsection is set out.

Session Laws 1951, c. 450, provides: "It shall be unlawful for any person to take, or attempt to take, by the use of firearms, any game bird or animal from the right of way of any public highway, roadway, or other publicly maintained thoroughfare, and this act shall apply only to the counties of Duplin and Pender."

§ 113-104. Manner of taking game.—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the board, in any hotel, restaurant, café, market or store, or by any produce dealer in this state shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset with a shot gun not larger than number ten (10) gauge, or a rifle, unless otherwise specifically permitted by this article. No person shall take any game animals or game birds or migratory game birds from any automobile, or by aid of or with the use of any jack-light, or other artificial light, net, trap, snare, fire, salt-lick or poison; nor shall any such jack-light, net, trap, snare, fire, salt-lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sail boat, or any boat under sail, or any floating device towed by a power boat or sail boat or, during the hours between sunset and sun-

rise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light when hunting raccoons or opossum with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shot gun be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the state when it shall appear necessary and advisable to the said board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor. (1949, c. 1205, s. 3.)

Editor's Note.—The 1949 amendment made changes in the first paragraph by inserting the words "at any time" in the provision prohibiting the taking of birds or animals from an airplane, etc., and added to said provision the following words: "or, during the hours between sunset and sunrise, from any other floating device." It also made lawful the use of an artificial light when hunting raccoons, opossum, or frogs. As the second and third paragraphs were not changed, they are not set out.

§ 113-109. Punishment for violation of article.

—Any person who takes, possesses, transports, buys, sells, offers for sale or has in possession for sale or transportation any wild bird, animal, or part thereof, or nest or egg of any bird, in violation of any of the provisions of this article, or who violates any other provisions of this article, or fails to perform any duty imposed upon him by this article, or who violates any lawful order, rule or regulation promulgated by the board, shall be guilty of a misdemeanor and upon the first offense and conviction thereof shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or imprisoned for not more than thirty days, and upon the second offense and conviction thereof shall be fined not less than twenty-five (\$25.00) dollars nor more than two hundred (\$200.00) dollars, or by imprisonment for not more than six months, or both, in the discretion of the court. And in all cases of conviction under this section, the court in which such conviction is had shall revoke any hunting license then held by the person so convicted, and the court shall require the surrender of said license, which shall be forwarded together with the record of such conviction to the board. Such revocation of license shall be mandatory for the remainder of the period for which the license was issued. Any person who shall swear or affirm to any false statement in any application for a hunting license shall be deemed guilty of perjury and on conviction shall be subject to the punishment provided for in the crime of perjury.

Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this article shall upon conviction be fined not less than

one hundred dollars (\$100.00) or imprisoned for not less than sixty (60) days or both fined and imprisoned in the discretion of the court. The following acts or circumstances shall constitute prima facie evidence of a violation of provisions of the preceding sentence: The flashing or display of any artificial light or device from any highway or public or private driveway so that the beam thereof is visible for a distance of as much as fifty (50) feet from such highway or public or private driveway, or such flashing or display of such artificial light or device at any place off such highway or driveway when such acts or circumstances are accompanied by the possession of firearms or bow and arrow during the hours between sunset and sunrise. Further, the use or possession of any artificial light or device under circumstances heretofore set forth in this article, except as authorized herein for the hunting of raccoons, opossums or frogs, shall constitute prima facie evidence of a violation of this article.

Provided further, that any person taking or having in possession doe (female) deer in violation of this article shall be fined not less than fifty dollars (\$50.00) or imprisoned not less than thirty (30) days or both fined and imprisoned in the discretion of the court. Any person, firm or corporation who buys or sells, or offers to buy or sell, quail, grouse and wild turkeys in violation of the provisions of this article shall, upon conviction thereof, be fined not less than fifty dollars, (\$50.00) or imprisoned for not more than sixty days, or both fined and imprisoned in the discretion of the court. (1935, c. 486, s. 25; 1939, c. 235, s. 2; c. 269; 1941, c. 231, s. 2; 1941, c. 288; 1945, c. 635; 1949, c. 1205, s. 4.)

Local Modification.—Beaufort, Buncombe, Gaston, Greenville, Lincoln, Mecklenburg: 1937, c. 352, repealed by 1951, c. 1045, s. 2.

Editor's Note.—The 1945 amendment rewrote the second sentence. The 1949 amendment inserted the words "less than ten dollars (\$10.00) nor" in lines eleven and twelve. It also inserted the provisions as to prima facie evidence of violation.

Art. 8. Fox Hunting Regulations.

§ 113-110. Closed season.

Repeal.—This section was repealed by Session Laws 1945, c. 217, which provided: "The repeal of this section shall not affect the legal status of any local law listed thereunder as the same was prior to the adoption of the General Statutes of North Carolina by the general assembly of one thousand nine hundred and forty-three."

Session Laws 1945, c. 844, repealed the portion of this section relating to Duplin county.

§ 113-111. No closed season in certain counties.

—It shall be lawful to hunt, take or kill foxes at any time in Ashe, Avery, Davidson, Iredell, Lenoir, Henderson, Pitt, Haywood, Harnett, Nash, Beaufort, Watauga and Davie counties. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263.)

Editor's Note.—The 1947 amendments made this section applicable to Davie, Nash and Beaufort counties. The 1949 amendment made this section applicable to Davidson county.

Art. 10A. Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 113-120.1. Trespass for purposes of hunting, etc., without written consent a misdemeanor.—Any person who wilfully goes on the lands, waters or ponds of another upon which notices, signs or posters, described in § 113-120.2, prohibiting hunt-

ing, fishing or trapping, or upon which "posted" notices, have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not more than fifty dollars (\$50.00) or by confinement in jail for not more than thirty days: Provided that no arrest under authority of this section shall be made without the consent of the owner or owners of said land or their duly authorized agent. (1949, c. 887, s. 1.)

§ 113-120.2. Regulations as to posting of property.—The notices, signs or posters described in § 113-120.1 shall measure not less than ten inches by twelve inches and shall be conspicuously posted on private lands not less than 150 yards and not more than 500 yards apart close to and along the boundaries. At least one such notice, sign or poster shall be posted on each side of such land, and one at each corner thereof, provided said corner can be reasonably ascertained. (1949, c. 887, s. 2.)

§ 113-120.3. Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent.

—Any person who shall mutilate, destroy or take down any "posted", "no hunting" or similar notice, sign or poster on the lands or waters of another, or who shall post such sign or poster on the lands or waters of another, without the consent of the landowner or his agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than fifteen dollars (\$15.00). (1949, c. 887, s. 3.)

§ 113-120.4. Fishing on navigable waters, etc., not prohibited.—Nothing in this article shall be construed to prohibit the entrance of any person upon navigable waters and the bays and sounds adjoining such waters for the purpose of fishing. (1949, c. 887, s. 4.)

SUBCHAPTER IV. FISH AND FISHERIES.

Art. 12. General Provisions for Administration.

§ 113-127. Definitions.

As to subsequent statute affecting this subchapter, see §§ 143-237 to 143-254.

Art. 13. Powers and Duties of Board and Commissioners.

§ 113-136. Regulations as to fish, fishing, and fisheries made by board.—The board of conservation and development is hereby authorized to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the state, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the state, or which may be bought, sold, or held in possession by any person, firm, or corporation in the state; and to make such rules regulating the shipment and transportation of fish, oysters, clams, crabs, scallops, and other water products, and all types of marine vegetation which may grow in the waters or on the bottoms of any navigable waters, as it may deem necessary; and all regulations, prohibitions, restrictions, and prescriptions, after due publication, which shall be construed to be once a week for four consecutive

weeks in some newspaper published in North Carolina, shall be of equal force and effect with the provisions of this section; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. (1915, c. 84, s. 21; 1917, c. 290, s. 7; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; C. S. 1878.)

Local Modification.—Beaufort, Buncombe, Gaston, Granville, Lincoln, Mecklenburg: 1937, c. 352, repealed by 1951, c. 1045, s. 2.

Editor's Note.—

The 1945 amendment inserted the provision as to marine vegetation near the middle of the section.

§ 113-142.1. Selling and replacing boats, etc.; special commercial fisheries equipment fund.—The Board of Conservation and Development is hereby authorized and empowered in its discretion from time to time to dispose of by sale through the State Division of Purchase and Contract, any boats, vessels, gear or equipment used by the Department of Conservation and Development or its agents in its program of enforcement of the laws and regulations governing commercial fishing, whenever in the judgment of the Board of Conservation and Development any such boat, vessel, gear or equipment has become obsolete or is no longer necessary or suitable for effective use in such law enforcement program.

The net proceeds of the sale of any properties made under the authority of this section shall be placed in a "special commercial fisheries equipment fund" to be used by the Board of Conservation and Development from time to time and in its discretion solely for the following purposes, namely: For purchasing through the Division of Purchase and Contract, such boats, vessels, aircraft, watercraft, gear or equipment as, in the judgment of the Board of Conservation and Development, will contribute to a more effective enforcement of the laws and regulations governing commercial fishing. (1951, c. 573.)

Art. 14. Licenses for Fishing in Inland Waters.

§ 113-143. Fishing licenses for persons above 16 years of age.—In order to raise revenue with which to maintain and operate the state fish hatcheries, provide additional nurseries and administer the inland fishing laws, a license is hereby required of all persons above the age of sixteen (16) years to fish by any and all methods of hook and line or rod and reel fishing in the waters of North Carolina. (1929, c. 335, s. 1; 1945, c. 567, s. 1.)

Editor's Note.—The 1945 amendment, effective Jan. 1, 1946, struck out the words "other than in waters of the county in which such person permanently resides or in waters abutting thereon, as hereinafter provided" formerly appearing at the end of this section.

§ 113-144. Resident state license.—Any person, upon application to the director of the department of conservation and development, his assistants, wardens, or agents, authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a bona fide resident of the state of North Carolina, shall, upon the payment of a license fee of three (\$3.00) dollars for the use of the department and a fee of ten (10c) cents for the use of the official authorized to issue licenses, be entitled to a "resident state license" which will authorize the licensee to fish in any of

the waters of North Carolina as provided under the preceding section; Provided that twenty-five cents (25c) of this fee shall be set aside as a special fund for the purchase and lease of lands and waters, to be developed for the protection and propagation of fish or to be used for public fishing, or for the purpose of securing federal funds, if available, for the purposes described above through the means of matching federal funds in such proportion as the federal laws may require, and that twenty-five cents (25c) of each such fee shall be expended by such commission, in its discretion, for the purposes of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina wildlife resources commission. (1929, c. 335, s. 2; 1945, c. 567, s. 2; 1949, c. 1203, s. 2.)

Editor's Note.—The 1945 amendment, effective Jan. 1, 1946, increased the fee in line eight from: two to three dollars and added the proviso.

The 1949 amendment rewrote the proviso at the end of the section.

For temporary act authorizing resident members of armed forces to fish without license, see Session Laws 1945, c. 647.

Use of Unexpended Funds.—See note to § 113-95.

§ 113-144.1. Licenses for service men.—All members of the armed forces of the United States stationed at a military facility in North Carolina shall be required to meet State fishing license requirements, as provided by this article, in any inland waters within the State including any inland waters under jurisdiction of the armed forces; provided, however, that any member of the armed forces who is a nonresident of North Carolina, and who is assigned to active duty at a military facility in North Carolina, shall be entitled to purchase a resident State fishing license without regard to State residence requirements. (1951, c. 1112, s. 2.)

§ 113-145. Non-resident state licenses.—Any person, without regard to age or sex, upon application to the director of the department of conservation and development, his assistants, wardens or agents authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a non-resident of the state, shall, upon the payment of six (\$6.00) dollars for the use of the department and ten (10c) cents for the use of the official authorized in writing to issue licenses, be entitled to a "non-resident state fishing license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under § 113-143; Provided that fifty (50c) cents of the "non-resident state fishing license" fee referred to above shall be set aside as a special fund for the purchase and lease of lands and waters to be developed for the protection and propagation of fish and for the acquisition by lease or purchase of waters for public fishing; Provided further, that any non-resident of the state desiring to fish for one day or more in the waters of the state of North Carolina may do so upon payment to the clerk of the court or game warden of the county in which the non-resident desires to fish the sum of one dollar and ten cents (\$1.10) for each day, the sum of ten (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of one dollar and ten cents (\$1.10) the clerk of the court or game warden shall issue a permit allowing said non-resident to

fish: Provided further, that any non-resident of the state desiring to fish for five days or less in any of the waters of North Carolina may do so upon payment to any authorized agent of the department the sum of two dollars and sixty cents (\$2.60) for each such period, the sum of two dollars and fifty cents (\$2.50) of said sum for the use of the department and the sum of ten cents (10c) for the use of the selling agent, and upon payment of the prescribed amount said non-resident shall be entitled to a "non-resident tourist license": Provided further, that any resident of the state desiring to fish for one day or more in the waters of any county in the state of North Carolina other than the county within which he resides may do so upon payment to the clerk of the court or game warden of a county in which he desires to fish the sum of sixty cents (60c) for each day, the sum of ten cents (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of sixty cents (60c), the clerk of the court or game warden shall issue a permit allowing said non-resident to fish: Provided further, that any non-resident twelve years of age or under regardless of sex shall be allowed to fish in the waters of North Carolina without paying any of the license or permit fees set forth in this section. (1929, c. 335, s. 3; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, s. 3.)

Editor's Note.—

The first 1945 amendment added the third and last provisos. The second 1945 amendment, effective Jan. 1, 1946, increased the fee in line eight from five to six dollars and inserted the first proviso.

§ 113-146. County licenses.—Any person who has lived in any county in North Carolina for a period of six months is deemed a resident of that county for the purpose of this section and upon application to the director of the department of conservation and development, his assistants, wardens, or agents authorized to issue licenses, and the presentation of satisfactory proof that he is a resident of the county, shall, upon the payment of one dollar (\$1.00) for the use of the department and ten cents (10c) for the use of the official authorized to issue licenses, be entitled to a "resident county fishing license," which will authorize the licensee to fish in any of the waters of that county: Provided, that said resident county license shall be required only of those persons using lures or baits of an artificial type. Artificial lures or baits are defined as lures or baits which are made by hand or manufactured and which are not available as natural fish foods. (1929, c. 335, s. 4; 1945, c. 567, s. 4.)

Editor's Note.—The 1945 amendment, effective Jan. 1, 1946, rewrote this section. It formerly also related to daily fishing permits.

§ 113-148. Department to furnish forms; what licenses must show; signature of licensee; licenses to become void on December 31 of year issued.—All licenses shall be issued on forms prepared and supplied by the department of conservation and development, the cost of which shall be paid from any funds that may come into its hands from the sale of fishing licenses. The license shall show the name, age, occupation and residence of the licensee and the date of its issuance. It shall also contain the signature of the licensee and shall authorize the person named therein, in all cases

where a resident county license is bought, to fish in any of the waters within the county in which the applicant permanently resides, under the restrictions and requirements of existing laws and the rules and regulations of the department during the year, the date of which is inscribed thereon. In all cases where either resident or non-resident state fishing licenses are bought, they shall also contain the signature of the licensee and shall authorize the person named therein to fish in any of the waters of the state of North Carolina under the restrictions and requirements of existing laws and regulations of the department during the year, the date of which is inscribed thereon. All licenses issued under and by virtue of this article shall become void on the thirty-first day of December next following the date of issuance. The licenses may contain such other information as the department may require. (1929, c. 335, s. 6; 1945, c. 567, s. 5.)

Editor's Note.—The 1945 amendment, effective Jan. 1, 1946, struck out the former provision relating to license buttons.

§ 113-152. Licenses to be kept about person of licensees.—No person shall fish as provided herein in any of the waters of North Carolina unless the license hereinbefore provided for be kept about the person of the licensee or exhibited upon the request of any official charged with the duty and responsibility of issuing licenses and enforcing the fishing law. (1929, c. 335, s. 10; 1945, c. 567, s. 6.)

Editor's Note.—The 1945 amendment, effective Jan. 1, 1946, struck out the former provision relating to license buttons.

§ 113-155. Fishing without landowner's permission.

Cross Reference.—As to trespassing upon posted lands or waters to hunt, fish or trap, see §§ 113-120.1 to 113-120.4.

Art. 15. Commercial Licenses and Regulations.

§ 113-158. Licenses to fish; issuance, terms, and enforcement.

All boats or vessels licensed to scoop, scrape, or dredge oysters shall display on the port side of the jib, above the reef and bonnet and on the opposite side of mainsail, above all reef points, in black letters not less than twenty inches long, the initial letter of the county granting the license and the number of said license, the number to be painted on canvas and furnished by the commissioner.

(1945, c. 1008, s. 1.)

Local Modification.—Onslow: 1949, c. 889.

Editor's Note.—The 1945 amendment struck out the words "for which he shall receive the sum of fifty cents" formerly appearing at the end of the fifth sentence. As the rest of the section was not affected by the amendment it is not set out.

§ 113-160: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-161. Boats using purse seines or shirred nets; tax.—(a) All boats or vessels of any kind used in operating purse seines or shirred nets shall pay a license fee of one dollar and fifty cents (\$1.50) per ton on gross tonnage, customhouse measurement, which shall be independent of and separate from the seine or net tax on the seines or nets used on said boats or vessels. This license fee shall be for one year from January first of each year and shall not be issued for any period of less than one year.

(b) Any boat or vessel operating purse seines or shirred nets without first having complied with the provisions of this section shall be seized, forfeited, and advertised for twenty days at the courthouse door and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds of such sale, less the cost of the proceedings, shall be paid into the school fund of the county where seized. Any person, firm, or corporation operating such boat or vessel in violation of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) All operators of boats or vessels of any kind used in operating purse seines or shirred nets shall apply for and obtain a license for each such purse seine or shirred net, and shall pay for such license a tax in the amount of ten dollars (\$10.00): Provided, that the tax herein levied on purse seines or shirred nets shall be in lieu of all other taxes levied by law against such seines or nets.

(d) Nothing in this section shall apply to boats fishing for edible fish. (1915, c. 84, s. 12; 1917, c. 290, s. 3; 1919, c. 333, s. 3; 1933, c. 106, s. 2; 1939, c. 191; 1945, c. 1008, s. 3; 1951, c. 1045, s. 1; C. S. 1890.)

Local Modification.—Onslow: 1949, c. 889.

Editor's Note.—

The 1945 amendment increased the license fee in subsection (a) from \$1.25 to \$1.50, and the license tax in former subsection (d), now (c), from \$5.00 to \$10.00. The 1951 amendment repealed former subsection (c) and renumbered former subsections (d) and (e) as (c) and (d).

§ 113-162. Licenses for various appliances and their users; schedule.—The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina by residents of the state:

Anchor gill nets, one dollar (\$1.00) for each hundred yards or fraction thereof.

Stake gill nets, fifty cents (50c) for each hundred yards or fraction thereof: Provided, that when any person uses more than one such net the tax shall be imposed upon the total length of all nets used and not upon each net separately.

Drift gill nets, one dollar (\$1.00) for each hundred yards or fraction thereof.

Pound nets, two dollars (\$2.00) on each pound; the pound is construed to apply to that part of the net which holds and from which fish are taken.

Submarine pounds, or submerged trap nets, two dollars (\$2.00) for each trap or pound.

Seines, drag nets and mullet nets under one hundred yards, one dollar (\$1.00) each.

Seines, drag nets and mullet nets over one hundred yards and under three hundred yards, one dollar (\$1.00) per hundred yards or fraction thereof.

Seines, drag nets and mullet nets over three hundred yards and under one thousand yards, one dollar (\$1.00) per hundred yards or fraction thereof.

Seines, drag nets and mullet nets over one thousand yards, one dollar (\$1.00) per one hundred yards or fraction thereof.

Fyke nets, one dollar (\$1.00) each.

Motor boats used in hauling nets, five dollars (\$5.00) for each boat.

Power boats used in sink net fishing in the Atlantic Ocean, five dollars (\$5.00) for each boat.

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used.

The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina by nonresidents of the state:

Anchor gill nets, two dollars (\$2.00) for each hundred yards or fraction thereof.

Stake gill nets, one dollar (\$1.00) for each hundred yards or fraction thereof: Provided, that when any person uses more than one such net the tax shall be imposed upon the total length of all nets used and not upon each net separately.

Drift gill nets, two dollars (\$2.00) for each hundred yards or fraction thereof.

Pound nets, four dollars (\$4.00) on each pound; the pound is construed to apply to that part of the net which holds and from which the fish are taken.

Submarine pounds, or submerged trap nets, four dollars (\$4.00) for each trap or pound.

Seines, drag nets and mullet nets under one hundred yards, two dollars (\$2.00) each.

Seines, drag nets and mullet nets over one hundred yards and under three hundred yards, two dollars (\$2.00) per one hundred yards or fraction thereof.

Seines, drag nets and mullet nets over three hundred yards and under one thousand yards, two dollars (\$2.00) per one hundred yards or fraction thereof.

Seines, drag nets and mullet nets over one thousand yards, two dollars (\$2.00) per one hundred yards or fraction thereof.

Fyke nets, two dollars (\$2.00) each.

Motor boats used in hauling nets, ten dollars (\$10.00) for each boat.

Power boats used in sink net fishing in the Atlantic Ocean, ten dollars (\$10.00) for each boat.

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used. (1915, c. 84, s. 14; 1917, c. 290, s. 5; 1919, c. 333, s. 3; 1925, c. 168, s. 1; 1927, c. 59, ss. 5, 7; 1931, c. 117; 1933, c. 106, s. 3; 1933, c. 433; 1945, c. 1008, s. 4; 1951, c. 1045, s. 1; C. S. 1891.)

Local Modification.—Onslow: 1949, c. 889.

Editor's Note.—

The 1951 amendment rewrote this section.

§ 113-163. License tax on dealers and packers.

—An annual license tax, for the year beginning January 1st in each year, to be collected by the commissioner of commercial fisheries, is imposed on all persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On oysters, twenty-five dollars (\$25.00) as provided in Article 16-A; scallops, five dollars; clams, five dollars; crabs, five dollars; fish, ten dollars; shrimp, five dollars: Provided, no license tax shall be imposed on fishermen who pay a license on nets to catch fish or shrimp, and who ship only the fish or shrimp caught in such licensed nets.

An annual license tax for the year beginning

January 1st in each year, to be collected by the Commissioner of Commercial Fisheries, is imposed on all nonresident persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On clams, twenty-five dollars (\$25.00); crabs, twenty-five dollars (\$25.00); escallops, twenty-five dollars (\$25.00); fish, twenty-five dollars (\$25.00); shrimp, twenty-five dollars (\$25.00).

Any person, firm corporation or syndicate engaged in the processing of menhaden fish within the borders of the State of North Carolina, shall pay an annual license tax, to be collected by the Commissioner of Commercial Fisheries, on each plant so operated, as follows: On fish scrap and oil extracting or separating plant, one hundred dollars (\$100.00); dehydrating plant, twenty-five dollars (\$25.00). (1917, c. 290, s. 5; 1919, c. 333, ss. 1, 2; 1933, c. 106, s. 4; 1945, c. 1008, s. 5; 1951, c. 1045, s. 1; C. S. 1892.)

Local Modification.—Onslow: 1949, c. 889.

Editor's Note.—

The 1945 amendment increased the license tax in the first paragraph.

The 1951 amendment increased the license tax imposed on the business of canning, etc., oysters from \$5.00 to \$25.00 in order to comply with § 113-216.2. The amendment also added the second and third paragraphs.

§ 113-164: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-165. **License tax on trawl boats.**—There shall be levied annually upon each trawl boat, or boat used for trawling purposes, documented in the customs house, a license tax of one dollar and fifty cents per gross ton, and on each trawl boat, or boat used for trawling purposes, not documented in the customs house a license tax of five dollars, and a tax of five dollars for each net. There shall be levied annually upon each nonresident trawl boat, or boat used for trawling purposes, documented in the customs house, a license tax of three dollars (\$3.00) per gross ton, and on each nonresident trawl boat, or boat used for trawling purposes, not documented in the customs house, a license tax of ten dollars (\$10.00), and a tax of ten dollars (\$10.00) for each net. (1933, c. 106, s. 6; 1945, c. 1008, s. 7; 1951, c. 1045, s. 1.)

Local Modification.—Onslow: 1949, c. 889.

Editor's Note.—The 1945 amendment increased the license tax in each instance.

The 1951 amendment added the second sentence.

§ 113-169: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-170. **Explosives, drugs, and poisons prohibited.**

Indictment held insufficient.—An indictment charging that defendants did unlawfully take fish with the use of dynamite and explosives is insufficient to charge the statutory offense of placing explosives in waters of the State for the purpose of taking, killing or injuring fish, and defendants' motion in arrest of judgment should be allowed. *State v. Miller*, 231 N. C. 419, 57 S. E. (2d) 392.

§ 113-172. **Discharge of deleterious matter into waters prohibited.**

Section Is Unconstitutional.—The proviso of this section exempting corporations chartered prior to 4 March, 1915, from the proscription against emptying into streams of the state deleterious or poisonous substances inimical to fish, creates a distinction having no relation to the evil sought to be remedied and renders the statute unconstitutional for failure to apply alike to all corporations or persons simi-

larly situated. *State v. Glidden Co.*, 228 N. C. 664, 46 S. E. (2d) 860.

However, the contention that this section is offensive to the constitution in that without due process of law it deprives or may deprive any person of property rights is not well taken. No matter how long the practice of polluting the waters by waste products from mining or manufacturing has been practiced, there is no proscription against the state when it sees fit to remedy the evil. *Id.*

Art. 16. Shellfish; General Laws.

§§ 113-186, 113-187: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-189: Repealed by Session Laws 1951, c. 1045, s. 1.

§§ 113-192, 113-193: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-196: Repealed by Session Laws 1951, c. 1045, s. 1.

§§ 113-198, 113-199: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-202: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-215: Repealed by Session Laws 1951, c. 1045, s. 1.

Art. 16A. Development of Oyster and Other Bivalve Resources.

§ 113-216.1. **Statement of purpose.**—The purpose of this article is to authorize the department of conservation and development, through the division of commercial fisheries, to manage, restore, develop, cultivate, conserve, and rehabilitate the oyster, clam, scallop, and other bivalve resources in the waters of Eastern North Carolina by qualified, specialized personnel. (1947, c. 1000, s. 1.)

§ 113-216.2. **Powers of board of conservation and development; oyster rehabilitation program.**

—I. The department of conservation and development shall conduct, through the division of commercial fisheries, a large oyster rehabilitation program consisting of large-scale operations for the planting of shells and seed oysters on natural oyster beds and other areas found to be suitable for oyster growth or reproduction, and subject to budgetary provisions, may procure suitable and adequate boats, barges, and the other suitable materials, and for collecting and transplanting seed and adult oysters, and for the proper and adequate enforcement of the statutes and regulations adopted pursuant thereto for the protection of marine bivalve resources.

II. The board of conservation and development is authorized and empowered to adopt rules and regulations to enforce the provisions of this article and to carry out its true purpose and intent, and in particular, dealing with and controlling the following subjects:

A. To limit the number of bushels of marketable oysters which may be taken from public beds in any one day and the number, weight, and size of dredges, but no one boat may take more than seventy-five (75) bushels in one day.

B. To close any or all portions of the public oyster beds when it is determined that such action will be beneficial to the shellfish industry or for the protection and propagation of oysters or because of prevailing marketing conditions.

C. To levy licenses, taxes, and fees not in excess of the following:

1. A tax not exceeding eight cents (8c) per bushel on oysters.

2. An annual license of fifteen dollars (\$15.00) on each oyster dredge boat.

3. A license of twenty-five dollars (\$25.00) on each packer, shucker, and canner, and to require the contribution of not more than fifty per cent (50%) of their oyster shells accumulated annually for planting on public beds.

D. To require persons dredging oysters from public beds to obtain a license and to deny the issuance of licenses to nonresidents, or to boats owned by nonresidents, or on which a lien is held by a nonresident.

E. To regulate, control, or prohibit the importation of new species of mollusks such as the Pacific oyster, *Ostrea gigas*.

F. To regulate, control, or prohibit the shipment of oysters in the shell out of the state of North Carolina and the sale of the oysters in the shell for shipment out of the state. If the board permits the sale of such oysters to nonresidents or for the purpose of shipment out of the state the purchasers shall pay a tax of fifty cents (50c) per bushel in addition to any other tax or fee levied. (1947, c. 1000, s. 2.)

§ 113-216.3. Appropriation for use by division of commercial fisheries.—There is hereby appropriated out of the general fund of the state to the department of conservation and development, for the use and benefit of the division of commercial fisheries, the sum of one hundred thousand dollars (\$100,000.00) to serve as a revolving fund to carry out the provisions of this article; and any portions of said fund remaining unexpended at the end of any fiscal year shall be carried over into the next fiscal year until otherwise directed by the general assembly of North Carolina. (1947, c. 1000, s. 3.)

§ 113-216.4. Use of proceeds from licenses, taxes and fees.—To make the program herein authorized self-supporting in so far as possible, all licenses, taxes, and fees imposed by this article or by other statutes applicable to shellfish shall be deposited with the state treasurer to be used solely to effectuate the purposes and requirements of this article. (1947, c. 1000, s. 4.)

Art. 17. Experimental Oyster Farms.

§§ 113-217 to 113-219: Repealed by Session Laws 1951, c. 1045, s. 1.

Art. 19. Terrapin.

§§ 113-227, 113-228: Repealed by Session Laws 1951, c. 1045, s. 1.

Art. 20. Salt Fish and Fish Scrap.

§ 113-229: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-231: Repealed by Session Laws 1951, c. 1045, s. 1.

Art. 21. Commercial Fin Fishing; General Regulations.

§§ 113-234 to 113-236: Repealed by Session Laws 1951, c. 1045, s. 1.

§§ 113-238 to 113-243: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-244. Poisoning streams.

Protection of Riparian Owners.—This section and § 113-287 were enacted, in part at least, for the protection of riparian owners and those similarly situated. *Hampton v. North Carolina Pulp Co.*, 223 N. C. 535, 543, 27 S. E. (2d) 538.

In an action by plaintiff, a riparian proprietor on a navigable river, who was the owner of a long established fishery upon the shores of his property along such stream wherein it was alleged that plaintiff had suffered damages by the interference of defendant in polluting the waters of the river with toxic chemicals and other matter deleterious to fish life, discharged into said river as waste from defendant's recently established pulp mill, causing a public nuisance and seriously interrupting the migratory passage of fish, it was held error to sustain a demurrer to the complaint as not stating a cause of action. *Hampton v. North Carolina Pulp Co.*, 223 N. C. 535, 27 S. E. (2d) 538.

§ 113-247. Sunday fishing.—If any person fish on Sunday with a seine, drag-net or other kind of net, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars or imprisoned not more than twelve months; provided, however, that the provisions of this section shall apply only to inland waters under the jurisdiction of the Wildlife Resources Commission, and shall not apply to any waters classified as commercial fishing waters. (Rev., s. 3841; Code, s. 1116; 1883, c. 338; 1933, c. 438; 1951, c. 1045, s. 1; C. S. 1970.)

Local Modification.—Onslow: 1933, c. 51, repealed by 1951, c. 1045, s. 2.

Editor's Note.—The 1951 amendment added the proviso.

§ 113-251. Obstructing passage of fish in streams.—If any person shall set a net of any description across the main channel of any river or creek, or shall erect, so as to extend more than three-fourths of the distance, across any such river or creek any stand, dam, weir, hedge or other obstruction to the passage of fish, or shall erect any stand, dam, weir, or hedge, in any part of any river or creek that may be left open for the passage of fish, or who, having erected any dam where the same was allowed, shall not make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish, he shall be guilty of a misdemeanor: Provided, however, that the provisions of this section shall apply only to inland waters under the jurisdiction of the Wildlife Resources Commission, and shall not apply to any waters classified as commercial fishing waters. (Rev., s. 2457; Code, ss. 3387, 3388, 3389; 1909, c. 466, s. 1; 1951, c. 1045, s. 1; C. S. 1974.)

Local Modification.—Onslow: C. S. 1974, repealed by 1951, c. 1045, s. 2.

Editor's Note.—The 1951 amendment added the proviso.

Art. 24. Shellfish; Local Laws.

§§ 113-266 to 113-269: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-269.1. Brunswick: Oyster and clam beds.—The Director of the Department of Conservation and Development is hereby directed to make a survey of the waters and sounds of Brunswick county, and to select and lay out oyster and clam beds in waters found suitable for that purpose, and to plant therein shells or seed oysters and clams, and shall plainly and clearly mark and define the limits and boundaries of each such oyster or clam bed so planted.

Any such oyster or clam beds so selected and planted under the provisions of this section shall

be closed to the taking of oysters and clams for a period of three (3) years from the date of planting, and any person taking oysters or clams from such beds within a period of three (3) years from the date of planting shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment or both, in the discretion of the court. (1951, c. 607.)

§§ 113-270 to 113-275: Repealed by Session Laws 1951, c. 1045, s. 1.

Art. 25. Commercial Fin Fishing; Local Regulations.

§§ 113-276 to 113-350: Repealed by Session Laws 1951, c. 1045, s. 1.

Editor's Note.—Many of the above sections, namely, §§ 113-291 to 113-295, 113-297, 113-299, 113-303, 113-304, 113-323, 113-326, 113-331, 113-332, 113-345, and 113-346, were formerly repealed by Session Laws 1945, c. 1013.

§§ 113-352 to 113-377: Repealed by Session Laws 1951, c. 1045, s. 1.

Editor's Note.—Many of the above sections, namely, §§ 113-352 to 113-354, 113-361, 113-372 to 113-374 and 113-376, were formerly repealed by Session Laws 1945, c. 1013.

Art. 26. Marine Fisheries Compact and Commission.

§ 113-377.1. **Atlantic states marine fisheries compact and commission.**—The governor of this state is hereby authorized and directed to execute a compact on behalf of the state of North Carolina with any one or more of the states of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

Article II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, North Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

Article III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Atlantic states marine fisheries commission. The board of the North Carolina department of conservation and development shall designate either the director of the department, the chairman of the committee on commercial fisheries, or the commissioner of commercial fisheries as one member of the commission, and the commission on interstate cooperation of the state shall designate a member of the North Carolina legislature as one of the members of said commission, and the third member of said commission, who shall be a citizen of the state having a knowledge of and interest in marine fisheries, shall be appointed by the governor. This commission shall be a body corporate, with the powers and duties set forth herein.

Article IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The commission shall more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

Article V

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt

rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

Article VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

Article VII

The fish and wildlife service of the department of the interior of the government of the United States shall act as the primary research agency of the Atlantic states marine fisheries commission, cooperating with the research agencies in each state for that purpose. Representatives of the said fish and wildlife service shall attend the meetings of the commission.

An advisory committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

Article VIII

When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the commission shall be limited to such species of anadromous fish.

Article IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

Article X

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

Article XI

The states party hereto agree to make annual appropriations to the support of the commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recently published reports of the fish and wildlife service of the United States department of the interior, provided no state shall contribute less than two hundred dollars (\$200.00) per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars (\$100.00).

The compacting states agree to appropriate initially the annual amounts scheduled below,

which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of Initial Annual State Contributions

Maine	\$ 700
New Hampshire	200
Massachusetts	2300
Rhode Island	300
Connecticut	400
New York	1300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1500

Article XII

This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto. (1949, c. 1086, s. 1.)

§ 113-377.2. Amendment to compact to establish joint regulation of specific fisheries.—The governor is authorized to execute on behalf of the state of North Carolina an amendment to the compact set out in § 113-377.1 with any one or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida or such other states as may become party to that compact for the purpose of permitting the states that ratify this amendment to establish joint regulation of specific fisheries common to those states through the Atlantic states marine fisheries commission and their representatives on that body. Notice of intention to withdraw from this amendment shall be executed and transmitted by the governor and shall be in accordance with Article XII of the Atlantic states marine fisheries compact and shall be effective as to this state with those states which similarly ratify this amendment. This amendment shall take effect as to this state with respect to such other of the aforesaid states as take similar action.

AMENDMENT NO. 1 OF THE ATLANTIC STATES MARINE FISHERIES COMPACT

The states consenting to this amendment agree that any two or more of them may designate the Atlantic states marine fisheries commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating states with respect to specific fisheries in which such states have a common interest. The representatives of such states on the Atlantic states marine fisheries commission shall constitute a separate section of such commission for the exercise of the additional

powers so granted, provided that the states so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the states participating therein of any of their privileges or powers or responsibilities in the Atlantic states marine fisheries commission under the general compact. (1949, c. 1086, s. 2.)

§ 113-377.3. North Carolina members of commission.—In pursuance of Article III of said compact there shall be three members (hereinafter called commissioners) of the Atlantic states marine fisheries commission (hereinafter called commission) from the state of North Carolina. The first commissioner from the state of North Carolina shall be either the director of the department of conservation and development, the chairman of the committee on commercial fisheries, or the commissioner of commercial fisheries of the state of North Carolina ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office and his successor as commissioner shall be his successor as either the director of the department of conservation and development, the chairman of the committee on commercial fisheries, or the commissioner of commercial fisheries, as the case may be. The second commissioner from the state of North Carolina shall be a legislator and member of the commission on interstate cooperation of the state of North Carolina, ex officio, designated by said commission on interstate cooperation, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office or said office as commissioner on interstate cooperation, and his successor as commissioner shall be named in like manner. The governor (by and with the advice and consent of the senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the governor (by and with the advice and consent of the senate) for the unexpired term. The director of the department of conservation and development, the chairman of the committee on commercial fisheries, or the commissioner of commercial fisheries appointed pursuant to Article III as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said compact shall then have gone into effect in accordance with Article II of the compact; otherwise they shall begin upon the date upon which said compact shall become effective in accordance with said Article II.

Any commissioner may be removed from office by the governor upon charges and after a hearing. (1949, c. 1086, s. 3.)

§ 113-377.4. Powers of commission and commissioners.—There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the state of North Carolina are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the state of North Carolina to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the state of North Carolina are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively. (1949, c. 1086, s. 4.)

§ 113-377.5. Powers herein granted to commission are supplemental.—Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the state of North Carolina or by the laws of the states of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia and Florida or by the congress or the terms of said compact. (1949, c. 1086, s. 5.)

§ 113-377.6. Report of commission to governor and legislature; recommendations for legislative action; examination of accounts and books by comptroller.—The commission shall keep accurate accounts of all receipts and disbursements and shall report to the governor and the legislature of the state of North Carolina on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the state of North Carolina which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The comptroller of the state of North Carolina is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such comptroller may deem proper and to report the results of such examination to the governor of such state. (1949, c. 1086, s. 6.)

§ 113-377.7. Appropriation by state; disbursement.—The sum of six hundred dollars (\$600.00), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the expenses of the commission created by the compact authorized by this article. The moneys hereby appropriated shall be paid out of the state treasury on

the audit and warrant of the comptroller upon vouchers certified by the chairman of the commission in the manner prescribed by law. (1949, c. 1086, s. 7.)

SUBCHAPTER IVA. REPEALS.

Art. 26A. Repeal of Acts.

§ 113-377.8. **Repeal of certain public, public-local, special and private acts.**—The following Public, Public-Local, Special and Private Acts are hereby repealed: Chapter 36 of the Public Laws of 1901; Chapter 113 of the Public Laws of 1901; Chapter 260 of the Public Laws of 1901; Chapter 308 of the Public Laws of 1901; Chapter 326 of the Public Laws of 1901; Chapter 370 of the Public Laws of 1901; Chapter 431 of the Public Laws of 1901; Chapter 435 of the Public Laws of 1901; Chapter 475 of the Public Laws of 1901; Chapter 589 of the Public Laws of 1901; Chapter 673 of the Public Laws of 1901; Chapter 702 of the Public Laws of 1901; Chapter 771 of the Public Laws of 1901; Chapter 131 of the Public Laws of 1903; Chapter 414 of the Public Laws of 1903; Chapter 520 of the Public Laws of 1903; Chapter 631 of the Public Laws of 1903; Chapter 650 of the Public Laws of 1903; Chapter 658 of the Public Laws of 1903; Chapter 668 of the Public Laws of 1903; Chapter 732 of the Public Laws of 1903; Chapter 752 of the Public Laws of 1903; Chapter 86 of the Public Laws of 1905; Chapter 265 of the Public Laws of 1905; Chapter 283 of the Public Laws of 1905; Chapter 351 of the Public Laws of 1905; Chapter 363 of the Public Laws of 1905; Chapter 500 of the Public Laws of 1905; Chapter 560 of the Public Laws of 1905; Chapter 386 of the Public Laws of 1907; Chapter 572 of the Public Laws of 1907; Chapter 690 of the Public Laws of 1907; Chapter 811 of the Public Laws of 1907; Chapter 977 of the Public Laws of 1907; Chapter 426 of the Public Laws of 1909; Chapter 466 of the Public Laws of 1909; Chapter 585 of the Public Laws of 1909; Chapter 755 of the Public Laws of 1909; Chapter 871 of the Public Laws of 1909; Chapter 525 of the Public-Local Laws of 1911; Chapter 547 of the Public-Local Laws of 1911; Chapter 572 of the Public-Local Laws of 1913; Chapter 587 of the Public-Local Laws of 1913; Chapter 402 of the Private Laws of 1913; Chapter 58 of the Public-Local Laws, Extra Session of 1913; Chapter 211 of the Public-Local Laws, Extra Session of 1913; Chapter 30 of the Public Laws of 1915; Chapter 180 of the Public Laws of 1915; Chapter 610 of the Public-Local Laws of 1915; Chapter 599 of the Public-Local Laws of 1917; Chapter 202 of the Public-Local Laws, Extra Session 1920; Chapter 114 of the Public-Local Laws of 1921; Chapter 384 of the Public-Local Laws of 1921; Chapter 432 of the Public-Local Laws of 1921; Chapter 439 of the Public-Local Laws of 1921; Chapter 157 of the Public-Local Laws, Extra Session of 1921; Chapter 130 of the Public-Local Laws of 1923; Chapter 352 of the Public-Local Laws of 1923; Chapter 533 of the Public-Local Laws of 1923; Chapter 548 of the Public-Local Laws of 1923; Chapter 461 of the Public-Local Laws of 1925; Chapter 623 of the Public-Local Laws of 1925; Chapter 228 of the Public-Local Laws of 1927; Chapter 208 of the Public-

Local Laws of 1929; Chapter 42 of the Public Laws of 1933; Chapter 51 of the Public Laws of 1933; Chapter 241 of the Public-Local Laws of 1933; Chapter 575 of the Public-Local Laws of 1933; Chapter 365 of the Public-Local Laws of 1935; Chapter 368 of the Public-Local Laws of 1935; Chapter 509 of the Public-Local Laws of 1935; Chapter 513 of the Public-Local Laws of 1935; Chapter 352 of the Public Laws of 1937; Chapter 266 of the Public-Local Laws of 1937; Chapter 632 of the Public-Local Laws of 1937; Chapter 265 of the Public Laws of 1939; Chapter 138 of the Public-Local Laws of 1939; Chapter 179 of the Public-Local Laws of 1939; Chapter 335 of the Public-Local Laws of 1941; Chapter 221 of the Special Laws of 1947; Chapter 485 of the Special Laws of 1947; Chapter 1017 of the Special Laws of 1947; Chapter 1031 of the Special Laws of 1949.

Provided that any public, public-local, special or private law herein repealed may be covered by a regulation of the Board of Conservation and Development to effectuate the same privileges or protection therein provided upon the petition of either the representative or senator from that county or district filed within six (6) months from the date of ratification. (1951, c. 1045, s. 2.)

Editor's Note.—The act inserting this section was ratified on April 14, 1951.

SUBCHAPTER V. OIL AND GAS CONSERVATION.

Art. 27. Oil and Gas Conservation.

Part I. General Provisions.

§ 113-378. **Persons drilling for oil or gas to register and furnish bond.**—Any person, firm or corporation before making any drilling exploration in this state for oil or natural gas shall register with the department of conservation and development or such other state agency as may hereafter be established to control the conservation of oil or gas in this state. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the aforesaid department of conservation and development a bond in the amount of two thousand five hundred dollars (\$2,500.00) running to the state of North Carolina, conditioned that any well opened by the drilling operator upon abandonment shall be plugged in accordance with the rules and regulations of said department of conservation and development. (1945, c. 765, s. 2.)

§ 113-379. **Filing log of drilling and development of each well.**—Upon the completion or shutting down of any abandoned well, the drilling operator shall file with the department of conservation and development or other state agency, or with any division thereof hereinafter created for the regulation of drilling for oil or natural gas, a complete log of the drilling and development of each well. (1945, c. 765, s. 3.)

§ 113-380. **Violation a misdemeanor.**—Any person, firm or officer of a corporation violating any of the provisions of §§ 113-378 or 113-379 shall upon conviction thereof be guilty of a misdemeanor.

or and shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000.00) and may in the discretion of the court be imprisoned for not more than two years. (1945, c. 765, s. 4.)

Part II. Provisions Dependent upon Action of Governor.

§ 113-381. Title.—This law shall be designated and known as the Oil and Gas Conservation Act. (1945, c. 702, s. 1.)

Editor's Note.—As to discussion of this act, see 23 N. C. Law Rev. 332.

§ 113-382. Declaration of policy.—If and when there should be discovered natural oil and/or natural gas within this state as a result of prospecting therefor by the drilling of wells, and where the discovery thereof in commercial quantities has been called to the attention of the governor and council of state, the governor shall thereupon, with the advice of the council of state, proclaim and declare this law to be in full force and effect, and shall proceed with the necessary action to see that the provisions of this law are carried out.

The general assembly, in recognition of imminent evils that can occur in the production and use and waste thereof in the absence of coequal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the same, this law is enacted for the protection of public and private interests against such evils by prohibiting waste and compelling ratable production. (1945, c. 702, s. 2.)

§ 113-383. Petroleum division created; members; terms of office; compensation and expenses.

—Subject to the provisions of § 113-382, there is hereby established in the department of conservation and development a division thereof to be known as the "petroleum division," hereinafter in this law called "the division," which division shall be composed of the director of the department of conservation and development and the state geologist as ex officio members thereof, and three members of the board of conservation and development, to be designated by the governor, the members so designated to serve on said division for a term of two years, or until their successors are designated. The successors of said members of said division shall be designated biennially by the governor. Any vacancies of said division may be filled by the governor. The said division shall designate one of its members, or such other person as it may select, to act as secretary thereof, unless a director of production and conservation is appointed as hereinafter provided. The members of the aforesaid petroleum division, other than the ex officio members thereof, shall receive the same per diem compensation for attending meetings thereof, and shall be allowed the same expenses, as are allowed to members of the board of conservation and development at meetings thereof. (1945, c. 702, s. 3.)

§ 113-384. Quorum.—A majority of said division shall constitute a quorum, and three affirmative votes shall be necessary for adoption or promulgation of any rules, regulations or orders. (1945, c. 702, s. 4.)

§ 113-385. Power to administer oaths.—Any member of the division, or the secretary thereof, shall have power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by this law or by any other law of this state relating to the conservation of oil or gas. (1945, c. 702, s. 5.)

§ 113-386. Director of production and conservation and other employees; duties of secretary; attorney general to furnish legal services.—The division may with the approval of the governor appoint one director of production and conservation at a salary to be fixed by the governor, and such other assistants, petroleum and natural gas engineers, bookkeepers, auditors, gaugers and stenographers, and other employees as may be necessary properly to administer and enforce the provisions of this law.

The director of production and conservation, when appointed, shall be ex officio secretary of the division, and shall keep all minutes and records of said division and, in addition thereto, shall collect and remit to the state treasurer all moneys collected. He shall, as such secretary, give bond in such sum as the division may direct with corporate surety to be approved by the division, conditioned that he will well and truly account for all funds coming into his hands as such secretary.

The attorney general shall furnish the required legal services and shall be given such additional assistants as he may deem to be necessary therefor. (1945, c. 702, s. 6.)

§ 113-387. Production of crude oil and gas regulated; tax assessments.—All common sources of supply of crude oil discovered after January first, one thousand nine hundred and forty-five, if so found necessary by the division, shall have the production of oil therefrom controlled or regulated in accordance with the provisions of this law, and the division is hereby authorized to assess from time to time against each barrel of oil produced and saved a tax not to exceed five (5) mills on each barrel. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law.

All common sources of supply of natural gas discovered after January first, one thousand nine hundred and forty-five, if so found necessary by the division, shall have the production of gas therefrom controlled or regulated in accordance with the provisions of this law, and the division is hereby authorized to assess from time to time against each thousand cubic feet of gas produced and saved from a gas well a tax not to exceed one half ($\frac{1}{2}$) mill on each one thousand cubic feet of gas. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law. (1945, c. 702, s. 7.)

§ 113-388. Collection of assessments.—Any person purchasing oil or gas in this state at the well, under any contract or agreement requiring payment for such production to the respective owners thereof, in respect of which production any sums assessed under the provisions of § 113-387 are payable to the division, is hereby authorized, empowered and required to deduct from any sums so payable to any such person the amount due the

division by virtue of any such assessment and remit that sum to the division.

Further, any person taking oil or gas from any well in this state for use or resale, in respect of which production any sums assessed under the provisions of § 113-387 are payable to the division, shall remit any sums so due to the division in accordance with those rules and regulations of the division which may be adopted in regard thereto. (1945, c. 702, s. 8.)

§ 113-389. Definitions.—Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

(A) "Division" shall mean the "petroleum division," as created by this law.

(B) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind.

(C) "Oil" shall mean crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(D) "Gas" shall mean all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection "C" above.

(E) "Pool" shall mean an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure which is completely separated from the other zone in the structure is covered by the term "pool" as used herein.

(F) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and "field" shall include the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; "field," unlike "pool," may relate to two or more pools.

(G) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and others.

(H) "Producer" shall mean the owner of a well or wells capable of producing oil or gas, or both.

(I) "Waste" in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. It shall include:

(1) The inefficient, excessive or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing inefficiently the quantity of oil or gas ultimately to be recovered from any pool in this state.

(2) The inefficient storing of oil, and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(3) Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and

unratable withdrawals causing undue drainage between tracts of land.

(4) Producing oil or gas in such manner as to cause unnecessary water channeling or coning.

(5) The operation of any oil well or wells with an inefficient gas-oil ratio.

(6) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(7) Underground waste however caused and whether or not defined.

(8) The creation of unnecessary fire hazards.

(9) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(10) Permitting gas produced from a gas well to escape into the air.

(J) "Product" means any commodity made from oil or gas and shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casing-head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzene, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil gas, whether hereinabove enumerated or not.

(K) "Illegal oil" shall mean oil which has been produced within the state of North Carolina from any well during any time that that well has produced in excess of the amount allowed by rule, regulation or order of the division, as distinguished from oil produced within the state of North Carolina from a well not producing in excess of the amount so allowed, which is "legal oil."

(L) "Illegal gas" shall mean gas which has been produced within the state of North Carolina from any well during any time that well has produced in excess of the amount allowed by any rule, regulation or order of the division, as distinguished from gas produced within the state of North Carolina from a well not producing in excess of the amount so allowed, which is "legal gas."

(M) "Illegal product" shall mean any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal oil or illegal gas or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(N) "Tender" shall mean a permit or certificate of clearance for the transportation of oil, gas or products, approved and issued or registered under the authority of the division. (1945, c. 702, s. 9.)

§ 113-390. Waste prohibited.—Waste of oil or gas as defined in this law is hereby prohibited. (1945, c. 702, s. 10.)

§ 113-391. Jurisdiction and authority of petroleum division; rules, regulations and orders.—The division shall have jurisdiction and authority of and over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

The division shall have the authority and it shall

be its duty to make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the division shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

The division shall have authority to make, after hearing and notice as hereinafter provided, such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of this law, including rules, regulations or orders for the following purposes:

A. To require the drilling, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of fresh water supplies by oil, gas or salt water; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.

B. To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such surveys are required, the costs thereof shall be borne by the owners making the request.

C. To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.

D. To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

E. To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

F. To prevent "blow-outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

G. To prevent fires.

H. To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

I. To regulate the "shooting," perforating, and chemical treatment of wells.

J. To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

K. To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.

L. To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

M. To regulate the spacing of wells and to establish drilling units.

N. To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

O. To prevent where necessary the use of gas for the manufacture of carbon black. (1945, c. 702, s. 11.)

§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in pools.—

A. Whether or not the total production from a pool be limited or prorated, no rule, regulation or order of the division shall be such in terms or effect (1) that it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can produce without waste such share, or (2) as to occasion net drainage from a tract unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can produce without waste such tract's just and equitable share, as set forth in this section, of the production of such pool.

B. For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the division shall, after a hearing, establish a drilling unit or units for each pool. The division may establish drainage units of uniform size for the entire pool or may, if the facts so justify, divide into zones any pool, establish a drainage unit for each zone, which unit may differ in size from that established in any other zone; and the division may from time to time, if the facts so justify, change the size of the unit established for the entire pool or for any zone or zones, or part thereof, establishing new zones and units if the facts justify their establishment.

C. Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may reasonably be necessary where it is shown, after notice and upon hearing, and the division finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the division shall take such action as will offset any advantage which the person securing the exception may have over producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

D. Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the

amount of production, or whether it be an amount less than that which the pool could produce if no restriction on the amount were imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, in so far as these amounts can be ascertained practically; and to that end, the rules, regulations, permits and orders of the division shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counter-drainage), and will give to each producer the opportunity to use his just and equitable share of the reservoir energy. (1945, c. 702, s. 12.)

§ 113-393. Development of lands as drilling unit by agreement or order of division.—A. Integration of Interests and Shares in Drilling Unit.—When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the division shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided further that the division has received no protest thereto, or request for hearing thereon, whether or not ten days have elapsed after notice has been given of the creation of the drilling unit, the operator designated by the division to develop and operate the integrated unit shall have the right to charge to each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production, with the value of the production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. After being reimbursed for the actual expenditures for drilling and equipping and operating expenses incurred during the

drilling operations and until the operator is reimbursed, the operator shall thereafter pay to the owner of each tract within the pool his ratable share of the production calculated at the market price in the field at the time of such production less the reasonable expense of operating the well. In the event of any dispute relative to such costs, the division shall determine the proper costs.

B. When Each Owner May Drill.—Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the division is without authority to require integration as provided for in subdivision A of this section, then, subject to all other applicable provisions of this law, the owner of each tract embraced within the drilling unit may drill on his tract, but the allowable production from each tract shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

C. Cooperative Development Not in Restraint of Trade.—Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlain by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the division, are hereby authorized and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraining of trade.

D. Variation from Vertical.—Whenever the division fixes the location of any well or wells on the surface, the point at which the maximum penetration of such wells into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface, provided, that the division shall prescribe rules, regulations and orders governing the reasonableness of such variation. (1945, c. 702, s. 13.)

§ 113-394. Limitations on production; allocating and prorating "allowables."—A. Whenever the total amount of oil, including condensate, which all the pools in the state can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this state, then the division shall limit the total amount of oil, including condensate, which may be produced in the state by fixing an amount which shall be designated "allowable" for this state, which will not exceed the reasonable market demand for oil, including condensate, produced in this state. The division shall then allocate or distribute the "allowable" for the state among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the state, and in fixing "allowables" for pools producing oil or hydrocarbons

forming condensate, or both oil and such hydrocarbons, the division shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and shall formulate rules setting forth standards or a program for the distribution of the "allowable" for the state, and shall distribute the "allowable" for the state in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the division shall permit the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the state is in excess of the amount which the pool should produce to prevent waste, then the division shall fix the "allowable" for the pool so that waste will be prevented.

B. The division shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the state, and in relation to the effect of limiting the production of pools in the state. In allocating "allowables" to pools, the division shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the division shall allocate the "allowable" for the state in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

C. Whenever the division limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the state), the division shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection I of section nine of this law [§ 113-392, subsec. D], subject to the reasonable necessities for the prevention of waste.

D. Whenever the total amount of gas which can be produced from any pool in this state exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom, the division shall limit the total amount of gas which may be produced from such pool. The division shall then allocate or distribute the allowable production among the developed areas in the pool on a rea-

sonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection one of section nine of this law whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law [§ 113-392, subsec. D]. As far as applicable, the provisions of subsection A of this section shall be followed in allocating any "allowable" of gas for the state.

E. After the effective date of any rule, regulation, or order of the division fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized. (1945, c. 702, s. 14.)

Editor's Note.—Subsections C and D of this section refer to "subsection I" and "subsection one" of section nine. Apparently the reference should have been to subsection D of section twelve, codified herein as § 113-392.

§ 113-395. Notice and payment of fee to division before drilling or abandoning well; plugging abandoned well.—Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the division upon such form as it may prescribe and shall pay a fee of fifty dollars (\$50.00) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole promptly shall be plugged in the manner and within the time required by regulations to be prescribed by the division, and the owner of such well shall give notice, upon such form as the division may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of fifteen dollars (\$15.00). No well shall be abandoned until such notice has been given and such fee has been paid. (1945, c. 702, s. 15.)

§ 113-396. Wells to be kept under control.—In order to protect further the natural gas fields and oil fields in this state, it is hereby declared to be unlawful for any person to permit negligently any gas or oil well to go wild or to get out of control. The owner of any such well shall, after twenty-four (24) hours' written notice by the division given to him or to the person in possession of such well, make reasonable effort to control such well.

In the event of the failure of the owner of such well within twenty-four (24) hours after service of the notice above provided for, to control the same, if such can be done within the period, or to begin in good faith upon service of such notice, operations to control such well, or upon failure to prosecute diligently such operations, then the division shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well all at the reasonable expense of the owner of the well. In order to secure to the division the payment of the reasonable cost and expense of controlling or plugging such well, the division shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and incomes therefrom until the costs and expenses incurred by the division shall

be repaid. When all such costs and expenses have been repaid, the division shall restore possession of such well to the owner; provided, that in the event the income received by the division shall not be sufficient to reimburse the division as provided for in this section, the division shall have a lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the division shall proceed to enforce such lien or privilege by suit brought in any court of competent jurisdiction, the same as any other civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the division which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well. (1945, c. 702, s. 16.)

§ 113-397. Hearing before division; notice; rules, regulations or orders; public records and copies as evidence.—A. The division shall prescribe its rules of order or procedure in hearings or other proceedings before it under this law, but in all hearings the rules of evidence as established by law shall be applied; provided, however, that the procedure before the division shall be summary.

B. No rule, regulation or order, including change, renewal, or extension thereof, shall, in the absence of an emergency, be made by the division under the provisions of this law except after a public hearing upon at least seven days' notice given in such form as may be prescribed by the division. Such public hearing shall be held at such time, place, and in such manner as may be prescribed by the division, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

C. In the event an emergency is found to exist by the division which in its judgment requires the making, changing, renewal or extension of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than ten days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

D. Should the division elect to give notice by personal service, such service may be made by any officer authorized to serve process or by any agent of the division in the same manner as is provided by law for the service of summons in civil actions in the superior courts of this state. Proof of the service by such agent shall be by the affidavit of the person making personal service.

E. All rules, regulations and orders made by the division shall be in writing and shall be entered in full by the director of production and conservation in a book to be kept for such purpose by the division, which book shall be a public record and be open to inspection at all times during reasonable office hours. A copy of such rule, regulation or order, certified by such director of production and conservation, shall be received in evidence in all

courts of this state with the same effect as the original.

F. Any interested person shall have the right to have the division call a hearing for the purpose of taking action in respect of any matter within the jurisdiction of the division by making a request therefor in writing. Upon the receipt of any such request, the division shall promptly call a hearing thereon, and, after such hearing, and with all convenient speed and in any event within thirty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. (1945, c. 702, s. 17.)

§ 113-398. Procedure and powers in hearings by division.—In the exercise and enforcement of its jurisdiction, the said division is authorized to summon witnesses, administer oaths, make ancillary orders and require the production of records and books for the purpose of examination at any hearing or investigation conducted by it. In connection with the exercise and enforcement of its jurisdiction, the division shall also have the right and authority to certify as for contempt, to the court of any county having jurisdiction, violations by any person of any of the provisions of this article or of the rules, regulations or orders of the division, and if it be found by said court that such person has knowingly and wilfully violated same, then such person shall be punished as for contempt in the same manner and to the same extent and with like effect as if said contempt had been of an order, judgment or decree of the court to which said certification is made. (1945, c. 702, s. 18.)

§ 113-399. Suits by division.—The said division shall have the right to maintain an action in any court of competent jurisdiction within this state to enforce by injunction, mandatory injunction, and any other appropriate or legal or equitable remedy, any valid rule, order or regulation made by the division or promulgated under the provisions of this article, and said court shall have the authority to make and render such judgments, orders and decrees as may be proper to enforce any such rules, orders and regulations made and promulgated by the division. (1945, c. 702, s. 19.)

§ 113-400. Assessing costs of hearings.—The said division is hereby authorized and directed to tax and assess against the parties involved in any hearing the costs incurred therein. (1945, c. 702, s. 20.)

§ 113-401. Party to hearings; review.—The term "party" as used in this article shall include any person, firm, corporation or association. In proceedings for review of an order or decision of said division, the division shall have all rights and privileges granted by this article to any other party to such proceedings. (1945, c. 702, s. 21.)

§ 113-402. Rehearings.—Any party being dissatisfied with any order or decision of the said division may, within ten (10) days from the date of the service of such order or decision, apply for a rehearing in respect to any matter determined therein; the application shall be granted or denied by the division within ten (10) days from the date same shall be filed, and if the rehearing be not granted within (10) ten days, it shall be taken as denied. If a rehearing be granted, the matter shall

be determined by the division within thirty (30) days after the same shall be submitted. No cause of action arising out of any order or decision of the division shall accrue in any court to any party unless such party makes application for a rehearing as herein provided. Such application shall set forth specifically the ground or grounds on which the applicant considers such order or decision to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made after a rehearing, abrogating, changing or modifying the original order or decision, shall have the same force and effect as an original order. (1945, c. 702, s. 22.)

§ 113-403. Application for court review; copy served on director who shall notify parties.—Within thirty (30) days after the application for a rehearing is denied, or if the application is granted, then within thirty (30) days after the rendition of the decision on rehearing, the applicant may apply to the court of the county in which the order of the division is to become effective for a review of such order or decision; if the order of the division is to become effective in more than one county, the application for review shall be filed in the office of the clerk of the superior court of the county mentioned above, and shall specifically state the grounds for review upon which the applicant relies and shall designate the order or decision sought to be reviewed. The clerk of the superior court shall immediately send a certified copy thereof, by registered mail, to the director of production and conservation. The director shall immediately notify all parties who appeared in the proceedings before the division by registered mail, that such application for review has been filed. (1945, c. 702, s. 23.)

§ 113-404. Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and upon appeal to supreme court.—The director of production and conservation, upon receipt of said copy of the application for review, shall forthwith transmit to the clerk of the superior court in which the application has been filed, a certified transcript of all pleadings, applications, proceedings, orders or decisions of the division and of the evidence heard by the division on the hearings of the matter or cause; provided, that the parties, with the consent and approval of the division, may stipulate in writing that only certain portions of the record be transcribed. Said proceedings for review shall be for the purpose of having the lawfulness or reasonableness of the original order or decision, or the order or decision on rehearing, inquired into and determined, and the superior court hearing said cause shall have the power to vacate or set aside such order or decision on the ground that such order or decision is unlawful or unreasonable. After the said transcript shall be filed in the office of the clerk of the superior court of the county in which the application is filed, the judge of said superior court may, on his motion, or on application of any parties interested therein, make an order fixing a time for the filing of abstracts and briefs and shall fix a day for the hearing of such cause. All proceedings under this section shall have precedence in any court in which they may be pending, and the

hearing of the cause shall be by the court without the intervention of a jury. An appeal shall lie to the supreme court of this state from orders, judgments and decisions made by the superior court. The procedure upon the trial of such proceedings in the superior court and upon appeal to the supreme court of this state shall be the same as in other civil actions, except as herein provided. No court of this state shall have power to set aside, modify or vacate any order or decision of the division except as herein provided. (1945, c. 702, s. 24.)

§ 113-405. Introduction of new or additional evidence in superior court; hearing of additional material evidence by division.—No new or additional evidence may be introduced upon the trial of any proceedings for review under the provisions of this article, but the cause shall be heard upon the questions of fact and law presented by the evidence and exhibits introduced before the division and certified to it: Provided, that if it shall be shown to the satisfaction of the court that any party to said proceeding has additional material evidence which could not, by the exercise of due diligence, have been produced at the hearing before the division, or which for some good reason it was prevented from producing at such hearing, or if upon the trial of the proceeding the court shall find that the division has erroneously refused to admit or consider material evidence offered by any party at the hearing before the division, the court may, in its discretion, stay the proceedings and make an order directing the division to hear and consider such evidence. In such cases, it shall be the duty of the division immediately to hear and consider such evidence and make an order modifying, setting aside or affirming its former decision. The division after hearing and considering such additional evidence shall vacate, modify, or affirm its decision and a transcript of the additional evidence and the order or decision of the division shall be certified and forwarded to the clerk of the superior court in which such proceeding is pending and said superior court shall on the motion of any interested party, order the trial to proceed upon the transcript as supplemented, so as to enable the court to properly determine if the order or decision of the division as originally made or as modified is in any respect unlawful or unreasonable. (1945, c. 702, sec. 25.)

§ 113-406. Effect of pendency of review; stay of proceedings.—The filing or pendency of the application for review provided for in this article shall not in itself stay or suspend the operation of any order or decision of the division, but, during the pendency of such proceeding the court, in its discretion, may stay or suspend, in whole or in part, the operation of the order or decision of the division. No order so staying or suspending an order or decision of the division shall be made by any court of this state otherwise than on five (5) days' notice and, after a hearing, and if a stay or suspension is allowed the order granting the same shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage. (1945, c. 702, s. 26.)

§ 113-407. Stay bond.—In case the order or de-

cision of the division is stayed or suspended, the order or judgment of the court shall not become effective until a bond shall have been executed and filed with and approved by the court, payable to the division, sufficient in amount and security to secure the prompt payment, by the party petitioning for the stay, of all damages caused by the delay in the enforcement of the order or decision of the division. (1945, c. 702, s. 27.)

§ 113-408. Enjoining violation of laws and regulations; service of process; application for drilling well to include residence address of applicant.—

Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made thereunder by any act done in the operation of any well producing oil or gas, or by omitting any act required to be done thereunder, the division, through the attorney general, may bring suit against such person in the superior court in the county in which the well in question is located, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit the division may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable.

If any such defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in such suit may be obtained by service made on any employee or agent of that defendant working on or about the oil or gas well involved in such suit, and by the division mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the director of production and conservation.

Each application for the drilling of a well in search of oil or gas in this state shall include the address of the residence of the applicant or each applicant, which address shall be the address of each person involved in accordance with the records of the director of production and conservation, until such address is changed on the records of the division after written request. (1945, c. 702, s. 28.)

§ 113-409. Punishment for making false entries, etc.—Any person who, for the purpose of evading this law, or of evading any rule, regulation, or order made thereunder, shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this law or by any rule, regulation, or order made hereunder; or who, for such purpose, shall make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this law or of any rule, regulation or order made thereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records, or memo-

randa, of all facts and transactions pertaining to the interest or activities in the petroleum industry of such person as may be required by the division under authority given in this law or by any rule, regulation, or order made hereunder; or who, for such purpose shall remove out of the jurisdiction of the state, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper, pertaining to the transactions regulated by this law, or by any rule, regulations, or order made hereunder, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five hundred (\$500.00) dollars, or imprisonment for a term of not more than six months, or both such fine and imprisonment. (1945, c. 702, s. 29.)

§ 113-410. Penalties for other violations.—Any person who knowingly and wilfully violates any provision of this law, or any rule, regulation, or order of the division made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to a penalty of not to exceed one thousand dollars (\$1,000.00) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the division, and such suit, by direction of the division, shall be instituted and conducted in the name of the division by the attorney general. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

Any person knowingly and wilfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil or gas, or the violation of any provision of this law, or any rule, regulation, or order made thereunder, shall be subject to the same penalties as prescribed herein for the violation by such other person. (1945, c. 702, s. 30.)

§ 113-411. Dealing in or handling of illegal oil, gas or product prohibited.—A. The sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product is hereby prohibited. All persons purchasing any petroleum product must first be licensed to do so by the petroleum division.

B. Unless and until the division provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase or acquisition, or transportation, refining, processing or handling in any other way, involves illegal oil, illegal gas or

illegal product, no penalty shall be imposed for the sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product, except under circumstances hereinafter stated. Penalties shall be imposed for the commission of each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas or illegal product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this law shall apply to any sale, purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase or acquire, or to transport, refine, process or handle in any other way any oil, gas or any product without complying with any rule, regulation or order of the division relating thereto. (1945, c. 702, s. 31.)

§ 113-412. Seizure and sale of contraband oil, gas and product.—Apart from, and in addition to, any other remedy or procedure which may be available to the division, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find, in the proceeding provided for in this paragraph, that the commodity involved is contraband. Whenever the division believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through the attorney general, have issued a warrant of attachment and bring a civil action in rem for that purpose in the superior court of the county where the commodity is found, or the action may be maintained in connection with any suit or crossbill for injunction or for penalty relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in such suit to protect his rights.

The action referred to above shall be strictly in rem and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons (without undertaking to name them) who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within thirty days after the issuance and service of such summons. The summons shall contain the style and number

of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. Copy of such summons shall be posted at least five days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the state. A copy of the summons shall also be published once each week for four weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication of said summons. Proof of service of said summons, and the manner thereof, shall be as provided by general law.

Where it appears by a verified pleading on the part of the plaintiff, or by affidavit, or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue a warrant of attachment, which shall be signed by the clerk and bear the seal of the court. Such warrant of attachment shall specifically describe the illegal oil, illegal gas or illegal product, so that the same may be identified with a reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product, described therein, and to hold the same subject to the orders of the court. Said warrant of attachment shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such warrant of attachment, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas or illegal product seized by him under a warrant of attachment, to a commissioner to be appointed by the court, which commissioner shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the orders of the court; provided, that the court may in its discretion appoint any member of the division or any agent of the division as such commissioner of the court.

Sales of illegal oil, illegal gas or illegal product seized under the authority of this law, and notices of such sales, shall be in accordance with the laws of this state relating to the sale and disposition of attached property; provided, however, that where the property is in custody of a commissioner of the court, the sale shall be held by said commissioner and not by the sheriff. For his services hereunder, such commissioner shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title

to the amount sold shall pass as of the date of the law which is found by the court to make the commodity contraband. The judgment shall provide for payment of the proceeds of the sale into the general fund of the state treasurer, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lien holder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas

or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character. (1945, c. 702, s. 32.)

§ 113-413. Funds for administration.—If the governor shall proclaim and declare this law to be in full force and effect prior to March first, one thousand nine hundred and forty-seven, the funds necessary for the administration of this law shall be provided by the governor from the contingency and emergency fund. (1945, c. 702, s. 33.)

§ 113-414. Filing list of renewed leases in office of register of deeds.—On December thirty-first of each year, or within ten days thereafter, every person, firm or corporation holding petroleum leases shall file in the office of the register of deeds of the county within which the land covered by such leases is located, a list showing the leases which have been renewed for the ensuing year. (1945, c. 702, s. 34.)

Chapter 114. Department of Justice.

Art. 2. Division of Legislative Drafting and Codification of Statutes.

114-9.1. Revisor of statutes.

Art. 1. Attorney General.

§ 114-4. Assistants; compensation; assignments.—The attorney general shall be allowed to appoint five assistant attorneys general, and each of such assistant attorneys general shall receive a salary to be fixed by the director of the budget. Two assistant attorneys general shall be assigned to the state department of revenue. The other assistant attorneys general shall perform such duties as may be assigned by the attorney general: Provided, however, the provisions of this section shall not be construed as preventing the attorney general from assigning additional duties to the assistant attorneys general assigned to the state department of revenue. (1925, c. 207, s. 1; 1937, c. 357; 1945, c. 786; 1947, c. 182.)

Editor's Note.—

The 1945 amendment increased the number of assistant attorneys general from three to four.

The 1947 amendment increased the number of assistant attorneys general from four to five, and made other changes in this section.

§ 114-7. Salary of attorney general.—The attorney general shall receive an annual salary of seven thousand five hundred dollars (\$7,500.00), payable monthly: Provided, that from and after the first day of January, 1949, the attorney general shall receive an annual salary of eight thousand four hundred dollars (\$8,400.00), payable monthly. (1929, c. 1, s. 2; 1947, c. 1043.)

Editor's Note.—The 1947 amendment added the proviso. Session Laws 1949, c. 1278, provides that the attorney

general shall receive ten thousand and eighty dollars (\$10,080.00) per year, payable in equal monthly installments.

Art. 2. Division of Legislative Drafting and Codification of Statutes.

§ 114-9.1. Revisor of statutes.—The member of the staff of the attorney general who is assigned to perform the duties prescribed by § 114-9 (c) shall be known as the revisor of statutes and shall receive a salary to be fixed by the governor with the approval of the council of state. (1947, c. 114, s. 1.)

Editor's Note.—For comment on this section, see 25 N. C. Law Rev. 459.

Art. 4. State Bureau of Investigation.

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of governor; witness fees and mileage for director and assistants.

All records and evidence collected and compiled by the director of the bureau and his assistants shall not be considered public records within the meaning of § 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the director of the bureau and his assistants shall, upon request, be made available to the solicitor of any district if the same concerns persons or investigations in his district.

(1947, c. 280.)

Editor's Note.—The 1947 amendment directed that the above paragraph be inserted between the first and last paragraphs of this section which are not set out here.

For brief comment on the amendment, see 25 N. C. Law Rev. 403.

Chapter 115. Education.**SUBCHAPTER I. THE PUBLIC SCHOOL SYSTEM.****Art. 1. Interpretations and General Consideration.**
Sec.

115-15.1. Majority vote in elections on bond issues, etc.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.**Art. 2. The State Board of Education.**

115-16. [Repealed.]

115-16.1. Educational districts.

115-25.1. Revolving fund for counties receiving federal aid for school lunches.

115-25.2. Acceptance and administration of federal aid to public education.

Art. 3A. Fiscal Control of School Funds; Administrative Agencies; Controller.

115-31.1. Purpose of article.

115-31.2. Powers and duties of the state board of education.

115-31.3. Appointment of controller.

115-31.4. Division of duties.

115-31.5. General principles basic to policies and procedures.

115-31.6. Definition of terms.

115-31.7. Duties of the state superintendent of public instruction as secretary of the state board of education.

115-31.8. Controllor to be administrator of fiscal affairs.

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Art. 3B. Division of Special Education for Handicapped Persons.

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115-31.17. Reimbursement of school districts having special education for handicapped persons.

115-31.18. Contributions and donations.

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Art. 3C. Division of Instructional Service.

115-31.20. Supervisor of music education.

Art. 3D. Division of Insurance.

115-31.21. Establishment of division of insurance; director; fire insurance safety inspectors and other employees.

115-31.22. Public school insurance fund; decrease of premiums when fund reaches 5% of total insurance in force.

115-31.23. Insurance of property by school governing boards; notice of election to insure and information to be furnished; outstanding policies.

Sec.

115-31.24. Inspections of insured public school properties.

115-31.25. Information to be furnished prior to insuring in the fund; providing for payment of premiums.

115-31.26. Determination and adjustment of premium rates; certificate as to insurance carried; no lapsation; notice as to premiums required, and payment thereof.

115-31.27. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local units; disbursement of funds.

115-31.28. Operating expenses.

115-31.29. Maintenance of inspection and engineering service; cancellation of insurance.

115-31.30. Rules and regulations.

SUBCHAPTER VI. TEACHERS AND PRINCIPALS.**Art. 16. Their Powers, Duties and Responsibilities.**

115-140. Health certificate required for teachers and other school personnel.

115-146. Duty to make reports to superintendent; making false reports or records.

SUBCHAPTER VII. REVENUE FOR THE PUBLIC SCHOOLS.**Art. 20. The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds.**

115-165. Treasurer of school funds.

SUBCHAPTER XIII. VOCATIONAL EDUCATION.**Art. 34. Duties, Powers and Responsibilities of State Board of Education.**

115-247.1. Vocational agricultural high schools authorized to acquire lands for forest study.

115-247.2. Use of unexpended funds from sale of certain school bonds, by county authorities, for vocational education.

Art. 34A. Area Vocational Schools.

115-248.1. Commission to study needs for area vocational schools.

115-248.2. Commission to report its findings and recommendations to governor.

115-248.3. Establishment of needed schools authorized; authority of state board of education.

Art. 36. Textile Training School.

115-255.1. Creation of board of trustees; members and terms of office; no compensation.

115-255.2. Powers of board.

115-255.3. When board to begin functioning; succeeds to powers and authority of former board.

Art. 36A. Vocational Training in Building Trades.

Sec.

- 115-257.2. Use of funds for purchase of building sites and materials.
- 115-257.3. Use of funds for acquiring skilled services.
- 115-257.4. Sale of buildings constructed by building trades classes; disposition of proceeds.
- 115-257.5. Advisory committee on construction of projects.
- 115-257.6. Approval of advisory committee required.
- 115-257.7. Current projects not limited or prohibited.

SUBCHAPTER XIV. TEXTBOOKS AND PUBLIC LIBRARIES.

Art. 37. Textbooks for Elementary Grades.

- 115-263 [Repealed.]
- 115-265. [Repealed.]

Art. 38. Textbooks for High Schools.

- 115-273. [Repealed.]

Art. 38A. Selection and Adoption of Textbooks.

- 115-278.1. State board of education to select and adopt textbooks; basal textbooks.
- 115-278.2. Continuance and discontinuance of contracts with publishers; procedure for change of textbook.
- 115-278.3. Board to adopt standard courses of study.
- 115-278.4. Appointment of textbook commission; members and chairman; compensation.
- 115-278.5. Commission to evaluate books offered for adoption.
- 115-278.6. Selection of textbooks by board.
- 115-278.7. Adoption of textbooks and contracts with publishers.
- 115-278.8. Charge for rentals.
- 115-278.9. Board to regulate matters affecting validity of contracts; approval of attorney general.
- 115-278.10. Purpose of article.
- 115-278.11. Definitions.

SUBCHAPTER XXII. SCHOOL LAW OF 1939.

Art. 50. The School Machinery Act.

- 115-357, 115-358. [Repealed.]
- 115-359.1. Salary increments for experience to teachers, principals and superintendents serving in armed and auxiliary forces.
- 115-361.1. Alteration or dissolution of city school administrative units; abolition of existing tax levies; new supplementary levies.
- 115-369. Audit of school funds.
- 115-377. Purchase of new equipment; heating facilities in busses
- 115-378.1. Monitors to preserve order in school busses.

SUBCHAPTER I. THE PUBLIC SCHOOL SYSTEM.

Art. 1. Interpretations and General Consideration. § 115-3. Schools provided for both races; taxes.

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-8. Administrative units classified.

Quoted in *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322.

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-9. The term "district" defined.

Quoted in *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322.

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-15.1. Majority vote in elections on bond issues, etc.—Wherever in chapter 115, General Statutes, or in any other statute, general, public or local, requirement is made that the levy of a tax or the issuance of bonds or the change of any boundary of school taxing districts is made to depend upon the vote of the majority of the qualified voters or a majority of the registered voters or any similar phrase, said law shall be and hereby is amended to require a majority of the qualified voters voting at such election on such propositions, the purpose hereof being to make all of said laws correspond to requirements of article 7, section 7, of the constitution of North Carolina, as amended. (1949, c. 1033, s. 2.)

Cross Reference.—For similar provision relating to majority vote in bond elections, see § 153-92.1.

Editor's Note.—For brief comment on this section, see 27 N. C. Law Rev. 454.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Art. 2. The State Board of Education.

§ 115-16: Repealed by Session Laws 1945, c. 721, s. 2.

Editor's Note.—The repealed section related to the incorporation and general corporate powers of the state board of education. Session Laws 1945, c. 804, restoring the corporate existence of the board, was repealed by Session Laws 1945, c. 1026.

§ 115-16.1. Educational districts.—The state of North Carolina is divided into eight educational districts as follows:

First District

Beaufort County, Bertie County, Camden County, Chowan County, Currituck County, Dare County, Gates County, Hertford County, Hyde County, Martin County, Pasquotank County, Perquimans County, Pitt County, Tyrell County, Washington County.

Second District

Brunswick County, Carteret County, Craven County, Duplin County, Greene County, Jones County, Lenoir County, New Hanover County, Onslow County, Pamlico County, Pender County, Sampson County, Wayne County.

Third District

Durham County, Edgecombe County, Franklin County, Granville County, Halifax County, Nash County, Northhampton County, Vance County, Wake County, Warren County, Wilson County, Johnston County.

Fourth District

Bladen County, Columbus County, Cumberland County, Harnett County, Hoke County, Lee County, Montgomery County, Moore County, Richmond County, Robeson County, Scotland County.

Fifth District

Alamance County, Caswell County, Chatham County, Davidson County, Forsyth County, Guilford County, Orange County, Person County, Randolph County, Rockingham County, Stokes County.

Sixth District

Anson County, Cabarrus County, Cleveland County, Gaston County, Lincoln County, Mecklenburg County, Stanly County, Union County.

Seventh District

Alexander County, Alleghany County, Ash County, Avery County, Burke County, Caldwell County, Catawba County, Davie County, Iredell County, Rowan County, Surry County, Watauga County, Wilkes County, Yadkin County.

Eighth District

Buncombe County, Cherokee County, Clay County, Graham County, Haywood County, Henderson County, Jackson County, Macon County, Madison County, McDowell County, Mitchell County, Polk County, Rutherford County, Swain County, Transylvania County, Yancey County. (1945, cc. 622, 923.)

§ 115-19. Powers and duties of the board.**Editor's Note.—**

For subsequent law affecting this section, see §§ 115-31.1 et seq. As to authority of board to alter or dissolve city school administrative units, see § 115-361.1. As to authority of board to advertise for public school teachers, see Session Laws 1949, c. 1264. As to authority of board to continue study of public school system, as undertaken by state education commission established by chapter 724 of 1947 Session Laws, codified as §§ 143-261 to 143-266, see Session Laws 1949, c. 1116, s. 6.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 362.

§ 115-19.1. Succeeds to property, powers, functions and duties of abolished commissions and boards; power to take, hold and convey property.

For authority of state board of education to convey or lease marsh and swamp lands to department of conservation and development, see §§ 146-99 to 146-101.

§ 115-20. Administration of public school system and educational funds; membership of board; officers; vacancies; quorum; compensation and expenses.**Editor's Note.—**

For subsequent law affecting this section, see §§ 115-31.1 et seq.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 362.

§ 115-21. Record of proceedings.

See § 115-31.7, par. 8.

§ 115-25.1. Revolving fund for counties receiving federal aid for school lunches.

1. Fund Provided for. — In order that the school administrative units of the state may participate in grants in aid and allotments in kind made by the federal government to provide low cost lunches for the school children of the state and in order that funds may be made quickly available to supply the casual deficits incurred by the school administrative units of the state while

awaiting payments of claims filed for approved federal aid the director of the budget is authorized to advance out of the general fund of this state a sum not exceeding three hundred thousand dollars (\$300,000.00) to be used as a revolving special fund by the state board of education to pay the counties of the state the amount of requisitions for funds approved by the state board of education that have been expended for school lunches in the schools of the counties and in the city school administrative units within the counties. These funds so advanced shall be returned to the general fund at the close of each school year.

2. Counties to Give Liens on Federal Funds.—The county boards of education and the tax levying authorities of the counties of the state are hereby authorized and required to give the state board of education liens on all federal funds received by the state board of education for payment to counties and in anticipation of which advances have been made to these counties by the state board of education.

3. Period for Advancement of Funds.—No advancement of funds shall be made to any county of the state for a longer period than that of the approved federal application on the basis of which the advancement of funds was made; provided, no funds shall be advanced to any county or city administrative school unit to cover the amount of the reimbursement due the school unit by the federal government covering the last month's lunch room operation in any school year. This period is construed to mean until final payment is made on the approved application.

4. Counties Authorized to Pledge Their Credit.—Since moneys advanced under the provisions of this section are for the purpose of supplying casual deficits incurred in anticipation of funds that have been approved for payment by the federal government upon the submission of properly prepared requisitions, it is the intent and purpose of the general assembly to authorize the counties of the state to pledge their faith and credit in accordance with section four of article V, of the constitution of the state of North Carolina.

5. Regulations.—Rules and regulations for advancing funds to the counties of the state under the provisions of this section and in addition to those recited in this section may be made by the state board of education.

6. Restrictions.—The advancement of funds to the counties of the state by the state board of education shall be made only to those counties receiving part payment of the cost of school lunches from the federal government. Should the federal government withdraw aid from the school lunch program or if for any reason the counties of the state do not participate in federal aid to school lunches or if changes are made in the distribution of federal funds for school lunches that make it unnecessary for further advances to be made to the counties of the state, all funds advanced under the provisions of this section shall be returned to the general fund of this state. (1945, c. 777.)

§ 115-25.2. Acceptance and administration of federal aid to public education.—In the event of the enactment by the congress of the United States of legislation now pending in said congress, known as Senate Bill No. 246, or any legislation designed for the same purpose, to authorize the

appropriation of funds to assist the states and territories in financing a minimum education program of elementary and secondary schools and for other purposes relating thereto, and in the event funds become available under appropriations made by congress for this purpose, in order to qualify for receiving the funds so appropriated, the governor of this state is hereby authorized and empowered to take such action and to authorize and empower any state officer, department, or agency to take such action and perform such service as may be required by the federal law for the acceptance and administration of said funds, which authority shall remain in effect until the adjournment of the first regular session of the legislature of this state after such federal legislation is enacted or until the legislature of this state takes the action required under the federal law to qualify and receive such federal funds, whichever first occurs, and, in the event federal funds become available to the states for elementary and secondary public schools by act of congress, then in that event, the state treasurer is designated to receive such funds for the state of North Carolina; the state board of education is designated as the state educational authority to administer these funds. These two agencies shall make all necessary audits, reports, and regulations required by the acts of congress in order for the state of North Carolina to receive its share of funds.

In the event such federal funds are provided, the state board of education is authorized and empowered to provide aid to the county and city administrative units for maintenance of plant and for all other purposes in the public schools of the state as may meet the requirements set forth for the use of such federal funds, to the end that the state may profit maximally from the use of such funds. The state board of education is also authorized, with the approval of the director of the budget, to provide for such additional personnel in the department of public instruction and the state board of education as may be necessary for adequate and necessary supervision and administration at state level, and the cost of such personnel, including administration, supervision, clerical help, travel expense, and other necessary expense shall be provided from such federal funds in accordance with federal rules and regulations pertaining thereto. Funds provided by federal appropriations shall be distributed by the state board of education on a just and equitable basis among the separate schools operated in this state. (1949, c. 1116, s. 4.)

Art. 3. State Superintendent of Public Instruction.

§ 115-27. Salary of state superintendent of public instruction.

Editor's Note.—Session Laws 1947, s. 1041, increased the salary of the state superintendent of public instruction to \$7,500.00 per year. And Session Laws 1949, c. 1278, effective April 23, 1949, provides that the salary, from and after the expiration of the present term of office of said officer, shall be \$9,000.00 per year, payable in equal monthly installments.

§ 115-28. Powers and duties.

For subsequent law relating to duties of superintendent, see § 115-31.7.

Art. 3A. Fiscal Control of School Funds; Administrative Agencies; Controller.

§ 115-31.1. Purpose of article.—The purpose of this article is to provide for adequate and efficient fiscal control of all funds committed to the state board of education which might be used by the public schools; to define and clarify the duties and responsibilities of the state board of education and the state superintendent of public instruction in connection with the handling of the fiscal affairs of the board and such other duties and responsibilities as are set forth in this article. (1945, c. 530, s. 2.)

§ 115-31.2. Powers and duties of the state board of education.—The powers and duties of the state board of education are defined as follows:

1. To have the general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in section five of article IX of the state constitution.

2. The state board of education shall succeed to all the powers and trusts of the president and directors of the literary fund of North Carolina and the state board of education as heretofore constituted.

3. The state board of education shall have power to divide the state into a convenient number of school districts. Such a school district may be entirely in one county or may consist of contiguous parts of two or more counties. The term "school district" as used in this section includes city administrative units and all other kinds of school districts referred to in this chapter.

4. To regulate the grade, salary and qualifications of teachers.

5. To provide for the selection and adoption of the textbooks to be used in the public schools.

6. To apportion and equalize the public school funds over the state.

7. And generally to supervise and administer the free public school system of the state and make all needful rules and regulations in relation thereto.

8. The board may employ one or more attendance officers for each educational district, determine their duties, and fix their compensation, such compensation to be paid from the nine months school fund, subject to the provisions of the personnel act.

9. The state board of education is hereby directed to fully comply with each and every provision of § 115-63 relating to the instruction on alcoholism and narcoticism in the public school system of the state of North Carolina. (1945, c. 530, s. 3; 1949, c. 597, s. 1.)

Editor's Note.—The 1949 amendment added the second and third sentences of subsection 3.

Section 2 of the 1949 amendatory act provides: "In all cases where the state school commission or the state board of education has heretofore created or enlarged a school district embracing contiguous portions of two or more counties, such action is hereby ratified and confirmed, and all enlargements of such school district made pursuant to G. S. § 115-361 are likewise hereby ratified and confirmed."

§ 115-31.3. Appointment of controller.—The board shall appoint a controller, subject to the approval of the governor, who shall serve at the will of the board and who, under the direction of the

board, shall have supervision and management of the fiscal affairs of the board. The salary of the controller shall be fixed by the board, subject to the approval of the director of the budget, and shall be paid from board appropriations. (1945, c. 530, s. 4.)

§ 115-31.4. Division of duties.—The board shall divide its duties into two separate functions, in so far as may be practical, as follows:

1. Those relating to the supervision and administration of the public school system, of which the superintendent shall be the administrative head, except as they relate to the supervision and management of the fiscal affairs of the board.

2. Those relating to the supervision and administration of the fiscal affairs of the public school funds committed to the administration of the state board of education, of which the controller shall have supervision and management. (1945, c. 530, s. 5.)

§ 115-31.5. General principles basic to policies and procedures.—The following general principles shall be considered as basic to the policies and procedures to be adopted:

1. The state board of education is the central educational authority. The board and its officials are charged with the responsibility of administering the public school system of North Carolina.

2. The present plan of the state supported public school system calls for a maximum of cooperative effort on the part of all school officials.

3. The state board of education is responsible for the planning and promotion of the educational system.

4. Programs of investigation and a well designed interpretation on a state-wide basis are a basic part of the duties of the state board of education. (1945, c. 530, s. 6.)

§ 115-31.6. Definition of terms.—The following words and references shall have the following meanings and interpretations:

1. "Board" means the state board of education.

2. "Superintendent" means superintendent of public instruction.

3. "Funds" means any moneys, administration of which is by law committed to the state board of education, whether derived from state or federal appropriation or allocation, private gift or donation, or acquired from any other source.

4. "Machinery Act" has reference to the school machinery act, being article 50 of this chapter.

5. "Administrative unit" shall include both county and city administrative units as defined in machinery act. (1945, c. 530, s. 7.)

§ 115-31.7. Duties of the state superintendent of public instruction as secretary of the state board of education.—It shall be the duty of the state superintendent of public instruction, under the direction of the board:

1. To organize and administer a department of public instruction for the execution of the instructional policies established by the board.

2. To keep the board informed regarding developments in the field of public education.

3. To make recommendations to the board with regard to the problems and needs of education in North Carolina.

4. To make available to the public schools a

continuous program of comprehensive supervisory services.

5. To collect and organize information regarding the public schools, on the basis of which he shall furnish the board such tabulations and reports as may be required by the board.

6. To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the board.

7. As secretary of the board, he shall be custodian of the corporate seal of the board and shall attest all deeds, leases, or written contracts to be executed in the name of the board.

8. The secretary, unless officially or otherwise prevented, shall attend all meetings of the board and shall keep a minute record of the proceedings of the board in a well bound and suitable book, which minutes shall be approved by the board prior to its adjournment; and as soon thereafter as possible, he shall furnish to each member of the board and the controller a copy of said minutes.

9. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the board, and all contracts of the board required to be in writing and/or under seal, shall be executed in the corporate name of the board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the probate of corporate instruments.

10. Such other duties as the board may assign to him from time to time. (1945, c. 530, s. 8.)

§ 115-31.8. Controller to be administrator of fiscal affairs.—1. Executive Administrator.—The controller is constituted the executive administrator of the board in the supervision and management of the fiscal affairs of the board.

2. Fiscal Affairs of Board Defined.—All matters pertaining to the budgeting, allocation, accounting, auditing, certification, and disbursing of public school funds, now or hereafter committed to the administration of the state board of education, are included within the meaning of the term "fiscal affairs of the board" and, under the direction of the board, shall be supervised and managed by the controller. The fiscal affairs of the board shall also include:

a. The preparation and administration of the state school budget, including all funds appropriated for the maintenance of the nine months public school term.

b. The allotment of teachers.

c. The protection of state funds by appropriate bonds.

d. Workmen's compensation as applicable to school employees.

e. Sick leave.

f. And all matters embraced in the objects of expenditure referred to in section IX, "Public School," in the act entitled "An Act to Make Appropriations for the Maintenance of the State's Departments, Bureaus, Institutions, and Agencies, and for Other Purposes," including therein:

(1) Support of nine months term public schools.

(2) State board of education.

(3) Vocational education.

(4) Purchase of free textbooks.

(5) Vocational textile training school.

(6) Purchase of school buses.

(7) Including such federal funds as may be made available by acts of congress for the use of public schools.

(8) And including also the administration of all funds derived from the sale and rental of textbooks in the public schools.

(9) Including the operation and administration of the transportation system; the operation of plant; and the other auxiliary agencies under the administration of the board. (1945, c. 530, s. 9.)

§ 115-31.9. Duties of the controller defined.—

1. The controller, under the direction of the board, shall have supervision and management of the fiscal affairs of the board.

2. The controller shall maintain a record or system of bookkeeping which shall reflect at all times the status of all educational funds committed to the administration of the board and particularly the following:

a. State appropriation for maintenance of the nine months public school term, which shall include all the objects of expenditure enumerated in § 115-356.

b. State appropriation and any other funds provided for the purchase and rental of public school textbooks.

c. State literary and building funds and such other building funds as may be hereafter provided by the general assembly for loans to county boards of education for school building and repair purposes.

d. State and federal funds for vocational education and/or other funds as may be provided by act of congress for assistance to the general secondary educational program.

e. Vocational rehabilitation funds.

f. State appropriation for the maintenance of the board and its office personnel and including all employees serving under the board.

g. Any miscellaneous funds within the jurisdiction of the board not included in the above.

3. The controller shall prepare all forms and questionnaires necessary to furnish information and data for the consideration of the board in preparing the state budget estimates required to be determined by the board as to each administrative unit.

4. The controller shall certify to each administrative unit the teacher allotment as determined by the board under § 115-355. The superintendents of the administrative units shall then certify to the superintendent the names of the persons employed as teachers and principals, by districts and by races. The superintendent shall then determine the certificate ratings of the teachers and principals and shall certify such ratings to the controller, who shall then determine, in accordance with the state standard salary schedule for teachers and principals, the salary rating of each person so certified. The controller shall then determine, in accordance with the schedule of salaries established, the total cost of salaries in each county and city administrative unit for teachers and principals to be included in the state budget for the current fiscal year.

5. The controller, before issuing any requisition upon the state auditor for payment out of the state treasury of any funds placed to the credit of

any administrative unit, under the provisions of § 115-367, shall satisfy himself:

a. That funds are lawfully available for the payment of such requisition; and

b. Where the order covers salary payment to any employee or employees, that the amount thereof is within the salary schedule or salary rating of the particular employee.

6. The controller, under the direction of the board, shall purchase, through the division of purchase and contract, all school buses to be used as replacements of old publicly owned buses, both as to chassis and bodies, under the provisions of § 115-377. He shall allocate all replacement buses so purchased to the various administrative units.

7. Under the direction of the board, the controller shall procure, through the division of purchase and contract, a contract or contracts for the purchase of the estimated needs and requirements of the several administrative units covering the items of fuel, gasoline, grease, tires, tubes, motor oil, janitor's supplies, instructional supplies including supplies used by the state board of education, textbooks, and all other supplies the payment for which is made from funds committed to the administration of the board.

8. The controller, under the direction of the board, shall have jurisdiction in all school bus transportation matters and in the establishment of all school bus routes, under the provisions of § 115-376.

9. The controller, in cooperation with the state auditor, shall have jurisdiction in the auditing of all school funds, under the provisions of § 115-369, and also in the auditing of all other funds which by law are committed to the administration of the board.

10. The controller shall attend all meetings of the board and shall furnish all such information and data concerning the fiscal affairs of the board as the board may require.

11. The controller, subject to the approval of the board, shall employ all necessary employees who work under his direction in the administration of the fiscal affairs of the board.

12. Upon all matters coming within the supervision and management of the controller, he shall report directly to the board.

13. The controller shall perform such other duties as may be assigned to him by the board from time to time.

14. The controller shall furnish to the superintendent such information relating to fiscal affairs as may be necessary in the administration of his official duties. (1945, c. 530, s. 10.)

§ 115-31.10. General regulations.—(1) Adoption of Textbooks.—A majority vote of the whole membership of the board shall be required to adopt textbooks, and a roll call vote shall be had on each motion for such adoption or adoptions. A record of all such votes shall be kept in the minute book.

(2) Regular Meetings of Board.—The regular meetings of the board shall be held each month on a day certain, as determined by the board, in the Education Building at Raleigh. The hour of meeting and the meetings may be continued from day to day, or to a day certain, until the business before the board has been disposed of.

(3) **Special Meetings.**—Special meetings of the board may be set at any regular meeting or may be called by the secretary upon the approval of the chairman. In case of regular meetings and special meetings, the secretary shall give notice to each member, in writing, of the time and purpose of the meeting, by letter directed to each member at his home post office address. Such notice must be deposited in the Raleigh Post Office at least five days prior to the date of meeting.

(4) **Presiding Officer.**—The chairman of the board shall preside at all meetings of the board. In the absence of the chairman, the vice chairman shall preside; and in the absence of both the chairman and the vice chairman, the board shall name one of its own members as chairman pro tempore.

(5) **Voting.**—No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member. The chairman shall not vote except in cases when his vote is necessary to break a tie. The secretary, as a board member, is entitled to vote on all matters before the board.

(6) **Other Regulations.**—The board shall make all other rules and regulations necessary to carry out the purpose and intent of this article. (1945, c. 503, s. 11.)

Art. 3B. Division of Special Education for Handicapped Persons.

§ 115-31.11. **Creation and purpose.**—There is created within the state department of public instruction a division of special education for the promotion, operation, and supervision of special courses of instruction for handicapped, crippled, and other classes of individuals requiring special types of instruction. (1947, c. 818, s. 1.)

§ 115-31.12. **Division administered by director; appointment and qualifications.**—The division of special education shall be administered by a director under the general supervision of the state department of public instruction. The director shall be appointed by the state board of education on the recommendation of the state superintendent. The director shall be qualified for his duties on the basis of education, training and experience. (1947, c. 818, s. 2.)

§ 115-31.13. **Powers and duties of director.**—In carrying out the functions of the division of special education the director, with the approval of the state board, shall have and perform the following powers and duties:

A. To aid school districts in the organization of special schools, classes and instructional facilities for handicapped children, and to supervise the system of special education for handicapped children in the several districts of the state.

B. To employ instructors and establish special courses of instruction for adult handicapped individuals.

C. To establish standards for teachers to be employed under the provisions of this article, to give examinations for teachers who qualify to teach handicapped individuals and to issue certificates to teachers who qualify for such teaching.

D. To adopt plans for the establishment and maintenance of day classes in schools, home in-

struction and other methods of special education for handicapped individuals.

E. To prescribe courses of study and curriculum for special schools, special classes and special instruction of handicapped individuals, including physical and psychological examinations and to prescribe minimum requirements for handicapped persons to be admitted to any such special schools, classes, or instruction.

F. To provide for recommendation by competent medical and psychological authorities of the eligibility of handicapped persons for admission to, or discharge from, special schools, classes, schools or instruction.

G. To cooperate with school districts in arranging for a handicapped child to attend school in a district other than the one in which he resides when there is no available special school, classes or instruction in the district in which he resides.

H. To cooperate with existing agencies such as the state department of public welfare, the state department of public health, the state schools for the blind and deaf, the state tuberculosis sanatoria, the children's hospitals, or other agencies concerned with the welfare and health of handicapped individuals, in the coordination of their educational activities.

I. To investigate and study the needs, methods, and costs of special education for handicapped persons.

J. To make rules and regulations to carry out the foregoing powers and duties. (1947, c. 818, s. 3.)

§ 115-31.14. **Duties of state board of education.**—The state board of education, subject to available appropriations for carrying out the purpose of this article, shall:

A. Adopt plans for equitable reimbursement of school districts for costs in carrying out programs of special education as provided for herein.

B. Provide for the purchase and otherwise acquire special equipment, appliances, and other aides for use in special education and to loan or lease same to school districts under such rules and regulations as the department may prescribe.

C. Establish and operate special courses of instruction for handicapped individuals and in proper case provide bedside training in hospitals, sanatoria, and such other places as the director finds proper. (1947, c. 818, s. 4.)

Editor's Note.—The word "aides" in line three of subsection B appears in the authenticated copy of the act. However, it seems that the word "aids" must have been intended by the general assembly.

§ 115-31.15. **Eligibility for special instruction; definition of handicapped person.**—Any person with a physical or mental handicap shall be eligible for appropriate special instruction provided for in accordance with this article. For the purpose of this article a handicapped individual shall be deemed to include any person with a physical or mental handicap. (1947, c. 818, s. 5.)

§ 115-31.16. **Special classes or instruction for handicapped persons.**—The board of education of any school district which has one or more handicapped individuals, with the approval of the superintendent of public instruction and the state board of education, may establish and organize suitable special classes or instruction in regular classes or in the homes and may provide special instruction as part of the school system for such handicapped

individuals as are entitled to attend schools therein. In case of the deaf or the hard of hearing and speech defective children, if it is more economical to do so, the director of special education, under the direction of the state superintendent and with the approval of the state board of education, may set up facilities for a county-wide plan to provide itinerant lip reading or speech teachers. In the event there are not enough children of any special class, such children may be transferred to a school in a school district where such special classes have been established. Such transfers may be made by mutual agreement of the school authorities, subject to the approval of the director of special education. (1947, c. 818, s. 6.)

§ 115-31.17. Reimbursement of school districts having special education for handicapped persons.—Any school district which has maintained a previously approved program of special education for handicapped individuals during any school year shall be entitled to and receive reimbursement from the state as determined by the state board of education for the excess cost of instruction of the individuals in said program of special education above the cost of instruction of pupils in the regular curriculum of the district which shall be determined in the following manner:

Each board shall keep an accurate, detailed, and separate account of all monies paid out by it for the maintenance of each of the types of classes and schools for the instruction and care of pupils attending them and for the cost of their transportation, and should annually report thereon, indicating the excess cost for each elementary or high school pupil for the school year ending in June, over the last ascertained average cost for the instruction of normal children in the elementary public schools or public high schools as the case might be, of the school district for a like period of time of attendance as such excess is determined and computed by the board and make claim for the excess as follows:

Applications for reimbursement for excess costs must first be submitted through the office of the director of special education to the superintendent of public instruction and the controller of the state board of education. If such applications are approved by them claims for excess cost shall be made as follows:

(a) To the county superintendent of schools, in triplicate, on or before July 15th, for approval on vouchers prescribed by the director of special education, the vouchers indicating the excess cost computed in accordance with rules prescribed by said director. The county superintendent of schools shall provide the director of special education with two copies of the vouchers on or before August 1st.

(b) The controller of the state board of education, before approving any such voucher, shall determine whether such claim is in fact eligible for the special educational service and whether the special educational services set forth in the application for state aid was in fact rendered him by the school board.

(c) Failure on the part of the school board to prepare and certify the report of claims for excess costs on or before July 15th, of any year, and if failure thereafter to prepare and certify such reports to the director of special education within

ten days after receipt of notice of such delinquency sent to it by the director of special education by registered mail, shall constitute a forfeiture of the school district of its right to be reimbursed by the state for the excess cost of education of such children for such year. (1947, c. 818, s. 7.)

Editor's Note.—While the word "claim" in line three of subsection (b) appears in the authenticated copy of the act, it seems that the word "claimant" must have been intended by the general assembly.

§ 115-31.18. Contributions and donations.—The state board is hereby authorized to receive contributions and donations to be used in conjunction with any appropriations that may be made to carry out the provisions and requirements of this article. (1947, c. 818, s. 8.)

§ 115-31.19. Board authorized to use funds for program.—The state board of education is authorized to provide from funds available for public schools for a program of special education as provided for in this article in accordance with such rules and regulations as the board may prescribe. (1949, c. 1033, s. 1.)

Art. 3C. Division of Instructional Service.

§ 115-31.20. Supervisor of music education.—There is hereby established in the department of public instruction in the division of instructional service a position to be known as supervisor of music education in which shall be provided a person who shall give full time to the supervision and promotion of music education in the public schools of North Carolina and in the various communities in which said public schools are located. It shall also be the duty of said supervisor to work with the music departments of the colleges and universities of the state in which music education and other activities in music are carried on and to cooperate with the North Carolina Symphony Society, the North Carolina Recreation Commission, and other agencies, clubs, and organizations interested in the promotion of music in the state.

There is hereby appropriated of the general fund of the state the sum of seventy-five hundred dollars (\$7,500) annually to provide for the salary, travel, and other expenses of the supervisor herein provided. (1949, c. 981.)

Art. 3D. Division of Insurance.

§ 115-31.21. Establishment of division of insurance; director; fire insurance safety inspectors and other employees.—The state board of education is hereby authorized, directed and empowered to establish a department to be known as "division of insurance of the state board of education" and shall appoint some person with suitable training and experience as the director thereof with such designation of his position as may be provided by the state board of education. The state board of education shall provide such fire insurance safety inspectors and engineers and other employees as shall be found necessary to carry out the provisions of this article and fix the compensation of such director and employees with the approval of the personnel department, all of said employees to serve at the will of the state board of education. (1949, c. 1182, s. 1.)

§ 115-31.22. Public school insurance fund; decrease of premiums when fund reaches 5% of total insurance in force.—There shall be set up in the books of the state treasurer a fund to be known and designated as the “public school insurance fund” which fund hereafter in this article is referred to as “the fund.” In order to provide adequate reserves against losses which may be incurred on account of the risks insured against as provided in this article and to provide payment for such losses as may be incurred therein, there is hereby appropriated to “the fund” the sum of two million dollars (\$2,000,000.00), which shall be paid from and charged to the state literary fund as set up and defined under subsection (a) of section 15 of article 1, chapter 115, General Statutes. When the reserves in “the fund” shall be increased by the payment of premiums by the governing boards of county and city administrative school units, or otherwise, to the extent of one million dollars (\$1,000,000.00), there shall be transferred from “the fund” back to the state literary fund the sum of one million dollars (\$1,000,000.00), and when “the fund” shall again be increased to the extent of another one million dollars (\$1,000,000.00), there shall be transferred therefrom back to the state literary fund an additional sum of one million dollars (\$1,000,000.00) in full reimbursement of the sum of two million dollars (\$2,000,000.00), which is authorized to be transferred from the state literary fund by the provisions hereof. All funds paid over to the state treasurer for premiums on insurance by the governing boards of county and city school administrative units and all money received from interest or from loans and deposits and from any other source connected with the insurance of the property hereinafter referred to shall be held by the state treasurer in “the fund” for the purpose of paying all fire, lightning, windstorm, hail and explosion losses for which the said fund shall be liable and the expenses necessary for the proper conduct of the insurance of said property as provided for in this article. Such part of the money in “the fund” as may not be needed for the payment of current demands thereon shall be invested by the state treasurer in such securities as constitute permissible investments for state sinking funds, and all of the earnings thereon shall be paid into “the fund.” The state treasurer shall annually report to the state board of education and to the general assembly the status of “the fund” and a detailed statement of the investments therein and earnings therefrom.

When the fund herein provided for reaches the sum of five per cent (5%) of the total insurance in force, then annually thereafter the state board of education shall proportionately decrease the premiums on insurance to an amount which will be sufficient to maintain “the fund” at five per cent (5%) of the total insurance in force, and in the event in the judgment of the state board of education the income from the investments of “the fund” are sufficient to maintain the same at five per cent (5%) of the total insurance in force, no premiums shall be charged for the ensuing year, provided that no building or property insured shall cease to pay premiums until five annual payments of premiums have been made whether or not through such payments the fund shall be

increased beyond five per cent (5%) of the total insurance in force, unless such building or property shall cease to be insurable within the meaning of this article within such five year period. (1949, c. 1182, s. 2.)

§ 115-31.23. Insurance of property by school governing boards; notice of election to insure and information to be furnished; outstanding policies.—From and after the first day of July, 1949, all county boards of education and all boards of trustees of city administrative units or other school governing boards may insure all school property within the unit against the direct loss or damage by fire, lightning, windstorm, hail or explosions resulting by reason of defects in equipment in public school buildings and other public school properties in “the fund” hereinbefore set up and provided for. Any property covered by an insurance policy in effect on the date when the property of a unit is insured in “the fund” shall be insured by “the fund” as of the expiration of the policy. Each school governing board shall give notice of its election to insure in “the fund” at least thirty days prior to such insurance becoming effective and shall furnish to the state board of education a full and complete list of all outstanding fire insurance policies, giving in complete detail the name of the insurers, the amount of the insurance and expirations thereof. While the said insurance policies remain in effect “the fund” shall act as coinsurer of the properties covered by such insurance to the same extent and in the same manner as is provided for coinsurance under the provisions of the standard form of fire insurance as provided by law, and in the event of loss shall have the same rights and duties as required by participating insurance companies. (1949, c. 1182, s. 3; 1951, c. 1027, s. 7.)

Editor's Note.—The 1951 amendment deleted the words “and before January 1, 1951” formerly appearing in the first and second lines.

§ 115-31.24. Inspections of insured public school properties.—The state board of education shall provide for periodic inspections of all public school properties in the state of North Carolina insured under the provisions hereof, the said inspections to be made by persons trained in making inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local school authorities shall be required, so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the state board of education. (1949, c. 1182, s. 4.)

§ 115-31.25. Information to be furnished prior to insuring in the fund; providing for payment of premiums.—Governing boards of city and county administrative units shall at least thirty days before insuring in “the fund”, furnish to the state board of education a complete and detailed list of all school buildings and contents thereof and other insurable school property, together with an

estimate of the present value of the said property. Valuation for purposes of insuring in "the fund" shall be reached by agreement in accordance with the procedure hereinafter set up in § 115-31.27 for adjustment of losses. Each governing board of city and county administrative units and the tax levying authorities shall be required to provide for the payment of premiums for insurance on the school properties of each unit, respectively, to the extent of not less than seventy-five per cent (75%) of the present value of the said properties, including the insurance in fire insurance companies and the insurance provided by "the fund" as set out herein. (1949, c. 1182, s. 5.)

§ 115-31.26. Determination and adjustment of premium rates; certificate as to insurance carried; no lapsation; notice as to premiums required, and payment thereof.—The state board of education shall as soon as practical determine the annual premium rate to be charged for insurance of school properties as herein provided, which said rate shall not, however, be in excess of the rates fixed by law for insurance of such properties in effect on May 31st, 1948, and such rates shall be adjusted from time to time so as to provide insurance against damage or loss resulting from fires, lightning, windstorm, hail or explosions resulting from defects in equipment in public school buildings and properties for the local school units at the lowest cost possible in keeping with the payment of cost of administration of this article and the creation of adequate reserves to pay losses which may be incurred. The state board of education shall furnish to each county and city administrative unit annually and, at such times as changes may require, a certificate showing the amount of insurance carried on each item of insurable property. The said insurance shall not lapse but shall remain in force until such property shall be abandoned for use as school property. From time to time the local school authorities shall be notified as to the amount of the premiums required to be paid for said insurance and the amounts thereof shall be provided for in the annual budget of such schools. The tax levying authorities shall provide by taxation or otherwise a sum sufficient to pay the required premiums thereon.

The local school authorities shall within thirty (30) days from notice thereof, pay to the state board of education the premiums on such insurance, and in the event that there are no funds on hand at such time with which to make said payment, the same shall be paid out of the first funds available to such school board. Delayed payments shall bear interest at the rate of six per cent (6%) per annum. (1949, c. 1182, s. 6.)

§ 115-31.27. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local units; disbursement of funds.—In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school units, "the fund" shall pay the loss in the same proportion as the amount of insurance carried bore to the valuation of the property at the time it was insured, but not exceeding the amount which it would cost to repair or replace the property with material of like quality within a reasonable time after such

loss, not in excess of the amount of insurance provided for said property, and not in excess of the amount of such loss which "the fund" is required to pay in participation with fire insurance companies having policies of insurance in force on said properties at the time of the loss or damage, and "the fund" shall not be liable for a greater proportion of any loss than the amount of insurance thereon shall bear to the whole insurance covering the property against the peril involved.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school units, to the property insured, when an agreement as to the extent of such loss or damage cannot be arrived at between the state board of education and the local officials having charge of the said property, the amount of such loss or damage shall be determined by three appraisers; one to be named by the state board of education; one by the local governing board having charge of the property, and the two so appointed shall select a third—all of whom shall be disinterested persons, and qualified from experience to appraise and value such property. The appraisers so named shall file their written report with the state board of education, and with the local governing board having such property in charge. The costs of the appraisal shall be paid by "the fund". When approved by the state board of education, the amount of such loss or damage to school property in the control of the county administrative unit shall be paid to the county treasurer, and the amount of loss or damage to property of a city administrative unit shall be paid to the treasurer of said unit upon proper warrant of the state board of education. Said funds shall be paid out by the treasury of said units, as provided by this chapter for the disbursement of the funds of such unit. (1949, c. 1182, s. 7.)

§ 115-31.28. Operating expenses.—There is hereby appropriated to "the fund", to be expended by the state board of education for costs of operation under this article for the period of the next biennium, the sum of fifty thousand dollars (\$50,000.00), but such additional necessary cost of operation shall be paid from "the fund" and thereafter all the costs of the operation of the said fund shall be provided from the premiums charged to the local school boards for insurance carried by "the fund" and earnings of "the fund" from investments thereof. (1949, c. 1182, s. 8.)

§ 115-31.29. Maintenance of inspection and engineering service; cancellation of insurance.—The state board of education is authorized and empowered to maintain an inspection and engineering service deemed by it appropriate and necessary to reduce the hazards of fire in public school buildings insured in "the fund", as hereinbefore provided, and to expend for such purpose not in excess of ten per cent (10%) of the annual premiums collected from the local school authorities. The state board of education is hereby authorized and empowered to cancel any insurance on any school property when, in its opinion, because of dilapidation and depreciation such property is no longer insurable. Before cancellation, the local school board shall be given at least thirty (30)

days' notice, and in the event said property can be restored to insurable condition, the state board of education may make such orders with respect to the continuance of such coverage as may be deemed proper. (1949, c. 1182, s. 9.)

§ 115-31.30. Rules and regulations.—The state board of education is hereby authorized and empowered to adopt all such rules and regulations providing for the details for insurance of public school properties in "the fund" as in their opinion are necessary for effectuating the purposes of this article. (1949, c. 1182, s. 10.)

SUBCHAPTER III. DUTIES, POWERS AND RESPONSIBILITIES OF COUNTY BOARDS OF EDUCATION.

Art. 5. The Board: Its Corporate Powers.

§ 115-38. How nominated and elected.

Local Modification.—Brunswick: 1949, c. 895; Montgomery: 1951, c. 560; Washington: 1951, c. 885.

§ 115-44. Organization of the board.

Stated in Russ v. Board of Education, 232 N. C. 128, 59 S. E. (2d) 589.

§ 115-45. The board a body corporate.

Action against Board on Teacher's Contract.—This section authorizes the maintenance of an action against a county board of education on a teacher's contract. Kirby v. Stokes County Board of Education, 230 N. C. 619, 55 S. E. (2d) 322.

Cited in Russ v. Board of Education, 232 N. C. 128, 59 S. E. (2d) 589.

§ 115-46. Compensation of members.

Local Modification.—Davidson: 1951, c. 600; Forsyth: 1951, c. 1050, s. 1; Lenoir: 1949, c. 749; Mecklenburg: 1949, c. 383.

Art. 6. The Direction and Supervision of the School System.

§ 115-55. General powers.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-56. General control.

Quoted in Kirby v. Stokes County Board of Education, 230 N. C. 619, 55 S. E. (2d) 322.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-57. Fixing time of opening and closing schools.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-58. Determination of length of school day.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-59. Duty to enforce the compulsory school law.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-62. Subjects taught in the elementary schools.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-65. Kindergartens may be established.—

If a majority of the qualified voters voting on such proposition shall vote in favor of the tax, then it shall be the duty of the board of trustees or directors or school committee of said district to establish and provide for kindergartens for the education of the children in said district of not

more than six years of age, and the county commissioners shall annually levy a tax for the support of said kindergarten departments not exceeding the amount specified in the order of election. Said tax shall be collected as all other taxes in the county are collected and shall be paid by the sheriff or tax collector to the treasurer of the said school district to be used exclusively for providing adequate quarters and for equipment and for the maintenance of said kindergarten department.

Such kindergarten schools as may be established under the provisions of this section, or established in any other manner, shall be subject to the supervision of the state department of public instruction and shall be operated in accordance with standards to be provided by the state board of education. (1923, c. 136, s. 40; 1945, c. 970, s. 1; 1949, c. 1033, s. 1; C. S. 5443.)

Editor's Note.—The 1945 amendment added the last or fourth paragraph of the section. And the 1949 amendment inserted in lines one and two of the third paragraph the words "voting on such proposition." As the first and second paragraphs were not affected by the amendments they are not set out.

For brief comment on the 1949 amendment, see 27 N. C. Law Rev. 454.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

Art. 9. Miscellaneous Provisions Regarding School Officials.

§ 115-73. Prescribing duties of superintendent not in conflict with law and constitution.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-74. Removal of committeemen for cause.

Committeeman May Be Removed Only for Cause.—A school committeeman for a district, although appointed by the county board of education, holds for a definite term of two years and is not removable at the will or caprice of the county board of education, but may be removed only for cause after notice and an opportunity to be heard. Russ v. Board of Education, 232 N. C. 128, 59 S. E. (2d) 589.

After Notice and Fair Hearing.—This section clearly contemplates that any school committeeman against whom the statutory proceeding for removal is brought shall be given notice of the proceeding, and of the charges against him, and afforded an opportunity to be heard and to produce testimony in his defense, and that the county board of education shall not remove him from his office unless it determines after a full and fair hearing on the merits that one or more of the specified causes for removal has been established by the evidence. Russ v. Board of Education, 232 N. C. 128, 59 S. E. (2d) 589.

Review of Board's Proceedings.—A proceeding for the removal of a school district committeeman under this section is judicial or quasi-judicial in character, and, there being no statutory provision for appeal, the procedure to obtain a review of the board's proceedings is by certiorari. Russ v. Board of Education, 232 N. C. 128, 59 S. E. (2d) 589.

§ 115-77. Authority of board over teachers, supervisors and principals.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-78. Providing for training of teachers.

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527.

Art. 10. Erection, Repair and Equipment of School Buildings.

§ 115-83. Provisions for school buildings and equipment.

County Commissioners to Determine What Expenditures Shall Be Made.—The board of commissioners of the county, and not the board of education is charged with the duty to determine what expenditures shall be made for the erection, repair and equipment of school buildings in the

county. *Johnson v. Marrow*, 228 N. C. 58, 61, 44 S. E. (2d) 468.

The control of the board of county commissioners over the expenditure of funds for the erection, repair and equipment of school buildings by the board of county commissioners, will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education or the trustees of an administrative unit. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484.

All Expenditures Must Be Authorized.—All expenditures for the construction, repair and equipment of school buildings in a county must be authorized by the board of county commissioners, acting in good faith, pursuant to statutory and constitutional authority. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484.

Commissioners May Reallocate Proceeds of Bond Issue.—A bond order issued under § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of bonds to different projects upon further finding, after investigation provided for in § 115-83, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484.

§ 115-84. Erection or repair of schoolhouses.

Power Discretionary.—

Whether a change should be made in the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless in violation of some provision of law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. *Feezor v. Siceloff*, 232 N. C. 563, 61 S. E. (2d) 714.

§ 115-85. Acquisition of sites.—The county board of education or board of trustees of any city administrative unit may receive by gift or by purchase suitable sites for schoolhouses or other school buildings. But whenever any such board is unable to obtain a suitable site for a school or school building by gift or purchase, the board shall report to the county or city superintendent of public instruction, who shall, upon five days' notice to the owner or owners of the land, apply to the clerk of the superior court of the county in which the land is situated for the appointment of three appraisers, who shall lay off by metes and bounds not more than thirty acres, and shall assess the value thereof. They shall make a written report of their proceedings, to be signed by them, or by a majority of them, to the clerk, within five days of their appointment, who shall enter the same upon the records of the court. The appraisers and officers shall serve without compensation. If the report is confirmed by the clerk, the chairman and the secretary of the board shall issue an order on the treasurer of the county school fund or, if a city administrative unit, upon the treasurer of such unit, in favor of the owner of the land thus laid off, and upon the payment, or offer of payment, of this order, the title to such land shall vest in fee simple in the corporation. Any person aggrieved by the action of the appraisers, including the county board of education or the board of trustees of any city administrative unit, may appeal to the superior court in term, upon giving bond to secure the board against such costs as may be incurred on account of the appeal not being prosecuted with effect. If the lands sought to be condemned hereunder, or any part of said lands, shall be owned by a nonresident of the state, before the clerk shall appoint appraisers therefor, notice to such nonresident owner shall

be given of such proceedings to condemn, by publication once a week for thirty days in some newspaper published in the county, and if no newspaper is published in the county, then by posting such notice at the courthouse door and three other public places in the county for the period of thirty days: Provided, where sites have already been acquired and additional adjacent lands are necessary such additional lands may be acquired as in this section provided, which lands, together with the old site, shall not exceed thirty acres. (1923, c. 136, s. 61; 1924, c. 121, s. 1; 1929, c. 309, ss. 1, 2; 1951, c. 391; c. 1027, s. 1; C. S. 5469.)

Local Modification.—City of Greensboro: 1951, c. 707, s. 3.

Editor's Note.—

The first 1951 amendment substituted "thirty acres" for "ten acres" in line fourteen and in the last line and the second 1951 amendment inserted the words "once a week" in the forty-second line.

The question of changing the location of a schoolhouse, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts, unless it is in violation of some provision of the law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484; *Feezor v. Siceloff*, 232 N. C. 563, 61 S. E. (2d) 714; *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725.

This section provides no limitation on the acreage which may be purchased or donated for a school site. The limitation applies only where the site, or any part thereof, must be obtained by condemnation. In such cases, the land owned, donated or purchased, together with the adjacent lands to be condemned, shall not exceed ten (now thirty) acres. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725.

High School and Elementary School on Adjoining Sites.—This section does not prohibit the location of a high school and an elementary school on adjoining sites. However, neither site may contain more than ten (now thirty) acres of land, if any part thereof must be obtained by condemnation. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725.

Where the county board of education selects a site for an elementary school contiguous to its high school site, it may condemn for such elementary school site lands not in excess of ten (now thirty) acres, since the board has the discretionary power to locate the schools on adjoining sites. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725.

§ 115-91. Duty of board to provide equipment for school buildings.—It is the duty of the county board of education or the board of trustees of a city administrative unit to provide suitable supplies for school buildings under its jurisdiction, such as window shades, fuel, chalk, erasers, blackboards, and other necessary supplies, and to provide public schools with reference books, library, maps and equipment for teaching science, and the teachers and principal shall be held responsible for the proper care of the same during the school term. (1923, c. 136, s. 66; 1945, c. 970, s. 2; C. S. 5474.)

Editor's Note.—The 1945 amendment substituted "public schools" for "standard high schools" in line seven.

Art. 11. Creating and Consolidating School Districts.

§ 115-99. Consolidation of schools or school districts.

Authority Discretionary.—Ordinarily the courts will not interfere with the discretionary authority of the county board of education to select school sites and consolidate schools of a district, and, with the approval of the State Board of Education, to consolidate school districts. *Gore v. Columbus County*, 232 N. C. 636, 61 S. E. (2d) 890.

Reallocation of Funds from Bond Issue.—The bond order

and the advertised statement of the purpose for which funds from a proposed school bond issue were to be used stipulated, *inter alia*, improvements in the elementary school of one district by the addition of eight classrooms, and improvements in the elementary and high school of another district. Thereafter the county board of education, on the basis of a survey, proposed to use the entire funds allocated for such improvements for the erection of a new high school building for the use of both schools. It was held that the county board of education has no power to reallocate the funds for the erection of the new high school in the absence of a finding in good faith that the erection of such new high school would so relieve the pupil load on the elementary schools that the use of the funds for the improvement and enlargement of the elementary schools would no longer be necessary because of changed condition. *Gore v. Columbus County*, 232 N. C. 636, 61 S. E. (2d) 890. Quoted in *Feezor v. Siceloff*, 232 N. C. 563, 61 S. E. (2d) 714.

SUBCHAPTER IV. COUNTY SUPERINTENDENTS' POWERS, DUTIES AND RESPONSIBILITIES.

Art. 12. General Duties.

§ 115-104. **Vacancies.**—In case of vacancy by death, resignation, or otherwise, in the office of county superintendent, such vacancy shall be filled by the county board of education. In case of like vacancy in the office of city superintendent such vacancy shall be filled by the city board of trustees, or other school governing body, of a city administrative unit. During the time any county or city superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for under G. S. 115-353. In case such position is not filled immediately on a permanent or temporary basis or in case of absence of a superintendent on account of illness or other approved reason, the respective boards by resolution duly adopted and recorded in the minutes of such board may assign to an employee of such school board, with the approval of the State school authorities, any duty or duties of such superintendent which necessity requires be performed during such time: Provided, that if the duty of signing warrants and checks is so assigned, said board shall give proper notice immediately to State and local disbursing officials. (1923, c. 136, s. 88; 1951, c. 1027, s. 2; C. S. 5496.)

Editor's Note.—The 1951 amendment added all of the section following the first sentence.

Art. 13. Duty of County Superintendent Toward Committeemen, Teachers and Principals.

§ 115-116. **Holding teachers' meetings.**—The county superintendent shall hold each year such teachers' meetings as in his judgment will improve the efficiency of the instruction in school. He may, with the cooperation of the supervisors or principals, outline reading courses for teachers and organize the teachers into special study groups.

If a superintendent shall fail to advise with his teachers and to provide for the professional growth of his teachers while in service, the state superintendent shall notify the county board of education, and, after due notice, if he shall fail to perform his duties in this respect, either the county board of education may remove him from office or the state board of education may revoke

his certificate. (1923, c. 136, s. 106; 1947, c. 1077, s. 5; C. S. 5512.)

Editor's Note.—The 1947 amendment struck out the words "and, if necessary, not exceeding three school days may be set apart for this purpose" formerly appearing at the end of the first paragraph.

SUBCHAPTER VI. TEACHERS AND PRINCIPALS.

Art. 16. Their Powers, Duties and Responsibilities.

§ 115-140. **Health certificate required for teachers and other school personnel.**—Any person serving as county superintendent, city superintendent, principal, teacher, or any other employee in the public schools of the state, shall file in the office of the county or city superintendent each year, before assuming his or her duties, a certificate from the county physician, health officer, or other reputable physician, certifying that the said person does not have tuberculosis in the communicable form, or other communicable disease, or any disease, physical or mental, which would impair the ability of the said person to perform effectively his or her duties.

The examining physician shall make the aforementioned certificate on an examination form supplied by the state superintendent of public instruction. The certificate shall be issued only after a physical examination has been made at the time of the certification, and such examination shall be in accordance with rules and regulations adopted by the state superintendent of public instruction, with the approval of the state health officer, and such rules and regulations may include the requirement of an X-ray chest examination.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court.

It shall be the duty of the county or city superintendent of the school in which the person is employed to enforce the provisions of this section. (1923, c. 136, s. 159; 1947, c. 387; C. S. 5556.)

Editor's Note.—The 1947 amendment rewrote this section.

§ 115-146. **Duty to make reports to superintendent; making false reports or records.**—Every teacher or principal of a school under the jurisdiction of the county board receiving aid from the public school fund shall be required to make such reports as are required by the county board of education, and the county superintendent shall not approve the voucher for the pay of teachers at the end of each month until the monthly reports required are made, and at the end of the year until the final reports are made: Provided, the county superintendent may require teachers to make reports to principals, and principals to make reports to the superintendent. Provided, that any superintendent, principal, teacher or other school employee employed in the public schools of North Carolina, who knowingly and willfully makes or procures another to make any false report or records, requisitions, or pay rolls, respecting daily attendance of pupils in the public schools of North Carolina, payroll data sheets or other reports made or required to be made to any board or officer in the performance of their

duties, shall be guilty of a misdemeanor and upon conviction fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the State Superintendent of Public Instruction. (1923, c. 136, s. 167; 1951, c. 1027, s. 3; C. S. 5564.)

Editor's Note.—The 1951 amendment inserted the second proviso.

SUBCHAPTER VII. REVENUE FOR THE PUBLIC SCHOOLS.

Art. 18. County Board of Education; Budget.

§ 115-158. **Debt service fund.**—The county board of education shall set forth in the budget the amount of the interest and installments on all loans due the State, and of all interest and installments on bonds and other evidences of indebtedness that may fall due. This shall be a separate item in the budget, and the commissioners shall levy annually a tax sufficient, clear of all fees, commissions, rebates, delinquents and the cost of collection, to repay the same; and if the taxes are not collected when the repayments fall due, the commissioners shall borrow the money and place the amount to the credit of the county board of education.

The county board of education, with the approval of the board of commissioners, and when the assumption of such indebtedness is approved at an election as hereinafter provided if such election is required by the Constitution, may include in the debt service fund in the budget all outstanding indebtedness for school purposes of every city, town, school district, school taxing district, township or other political subdivision in the county (hereinafter collectively called "local districts"), lawfully incurred in erecting and equipping school buildings necessary for the school term. The election on the question of assuming such indebtedness shall be called and held in accordance with the provisions of Article 9 of Chapter 153 of the General Statutes, known as "The County Finance Act," in so far as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, filed and published as provided in the County Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. When such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of this fund among the schools of the county as provided in this section. (1923, c. 136, s. 179; 1925, c. 180, s. 6; 1933, c. 299; 1951, c. 130, s. 1; C. S. 5599, 5600.)

Editor's Note.—

The 1951 amendment rewrote the second paragraph. **Validation of Assumption of Indebtedness.**—Session Laws 1951, c. 130, s. 2, ratified February 28, 1951, provides: "The assumption by any county, at any time prior to the ratification of this act, of the indebtedness of local districts for school purposes and all proceedings had in connection therewith are hereby in all respects ratified, approved, confirmed and validated."

Art. 20. The Treasurer: His Powers, Duties and Responsibilities in Disbursing School Funds.

§ 115-165. **Treasurer of school funds.**—(1) **County School Administrative Unit.**—The county treasurer of each county shall be the treasurer of all county school funds and school district funds of county school administrative units. He shall receive and disburse all such school funds and shall keep the same separate and distinct from all other funds.

Before entering upon the duties of his office, the county treasurer shall furnish bond in some surety company authorized to do business in North Carolina in an amount to be fixed by the board of county commissioners, which bond shall be a separate bond, not including liability for other funds, and shall be conditioned for the faithful performance of his duties as treasurer of the county school funds and school district funds of the county administrative unit and for the payment to his successor in office of any unexpended balance of school moneys which may be in his hands. The board of county commissioners may from time to time, if necessary, require him to strengthen his bond.

In all counties in which the office of county treasurer has been abolished as authorized by General Statutes, § 155-3, or when by any other law a bank or trust company has been substituted therefor, such bank or trust company shall act as treasurer and depository of all county school funds and school district funds; provided, however, that such bank or trust company acting as treasurer of county school funds and district school funds shall not be required to maintain the system of bookkeeping and accounting imposed upon the county treasurer by General Statutes, § 155-7, but the duty and responsibility of keeping and maintaining the accounting system as to county and district school funds shall be the duty and responsibility of the county accountant or county auditor serving as such under the provisions of General Statutes, § 153-15; and, provided further, that nothing contained in this section shall relieve the superintendent of any county administrative unit from maintaining such accounting system and furnishing such reports as are now or may hereinafter be imposed upon him by law.

(2) **City School Administrative Unit.**—Unless otherwise provided by law, the board of trustees of a city administrative unit shall appoint a treasurer of all the school funds of such city administrative unit. The treasurer so appointed shall continue to fill such position at the will of the board of trustees of such city administrative unit. No person authorized to make the expenditures or draw vouchers therefor, or to approve the same, shall act as treasurer of such funds.

Before entering upon the duties of his office, the treasurer of such city administrative unit shall file with the trustees of such administrative unit a good and sufficient bond with surety by some surety company authorized to do business in North Carolina in an amount to be fixed by the board of trustees of such administrative unit, which shall be a separate bond, not including liability for any other funds, and shall be conditioned for the faithful performance of the duties of treasurer of the city administrative unit school funds and for the proper accounting for all such funds as may

come into his possession by virtue of his office as treasurer and for payment to his successor in office of any unexpended balance of school moneys which may be in his hands.

The treasurer of city administrative unit school funds is hereby required to maintain and keep, with respect to said funds, like records and accounts and make such reports with respect to said funds as herein provided to be made, kept, and maintained by the treasurer of county and district school funds of county administrative units.

(3) **Special Funds of Individual Schools.**—The county board of education of all county administrative units and the board of trustees of all city administrative units shall, by proper resolution duly recorded, appoint a treasurer of all special school funds for each school in the respective administrative unit. In all individual schools a complete record shall be kept by the treasurer so appointed and reports made of all money received and from what source and of all money disbursed and for what purpose; provided, however, that nothing in this subsection (3) shall prevent the handling of these special school funds under subsection (1) and subsection (2) of this section. The treasurer of all special funds so appointed and the principal of each school shall make a monthly report, and such other reports as may be required, to the superintendent of the administrative unit wherein such individual school is located, showing the status of each special school fund, upon forms to be supplied for that purpose. (1923, c. 136, s. 193; 1949, c. 1082, s. 1; C. S. 5614.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 115-168. County board of education to have accounts of the board of education and the county treasurer of the public school fund audited.

Local Modification.—Currituck: 1945, c. 898.

Art. 21. Fines, Forfeitures and Penalties.

§ 115-179. Fines paid to treasurer for schools; annual report.—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise shall be accounted for and paid to the county treasurer by the officials receiving them within thirty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the superintendent of public instruction on or before the first Monday in January, by the board of commissioners. (1923, c. 136, s. 211; 1951, c. 785, s. 1; C. S. 5630.)

Editor's Note.—The 1951 amendment substituted "thirty" for "sixty" in line five.

SUBCHAPTER VIII. LOCAL TAX ELECTIONS FOR SCHOOLS.

Art. 22. School Districts Authorized to Vote Local Taxes.

§ 115-189. Levy and collection of taxes.—In case a majority of those who shall vote thereon shall vote at the election in favor of the tax, it shall be annually levied and collected in the manner prescribed for the levy and collection of other

taxes, and the maximum rate so voted shall be levied, unless the county board of education or board of trustees shall request a levy at a lower rate, in which event the rate requested shall be levied and collected; and the superintendent of schools and the officer in charge of tax records shall keep records in their respective offices showing the valuation of the property, real and personal, in the district or unit, the rate of tax authorized annually to be levied, and the amount annually derived from the local tax, and it shall be illegal for any part of the local tax fund to be used for any purpose other than to supplement the funds for a nine months school term in the district or unit. (1923, c. 136, s. 222; 1943, c. 255, s. 2; 1949, c. 918, s. 1; C. S. 5642.)

Editor's Note.—Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

As to subsequent statute affecting the majority of voters required, see § 153-92.1.

§ 115-191. Frequency of election.—In the event that a majority of those who shall vote thereon in a district or unit do not at the election cast their votes for the local tax, another election or elections under the provisions of this article may be held after the lapse of six months in the same district or unit. (1923, c. 136, s. 225; 1949, c. 918, s. 2; C. S. 5645.)

Editor's Note.—Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 115-192. Enlargement of local tax districts.

—Upon a written petition of a majority of the governing board of any district, the county board of education, after approving the petition, shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of any such district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes as provided in this article: Provided, the local tax rate specified in the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the territory is to be added. If a majority of those who shall vote thereon in such new territory shall vote in favor of such tax, the new territory shall become a part of said district, and the term "local tax of the same rate" herein used shall include, in addition to the usual local tax, any tax levied to meet the interest and sinking fund of any bonds heretofore issued by the district proposed to be enlarged. In case a majority of those who shall vote thereon at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed. (1923, c. 136, s. 226; 1925, c. 151; 1927, c. 88; 1949, c. 918, s. 3; C. S. 5646.)

Editor's Note.—Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 115-193. Abolition of district upon election.—Upon petition of one-half of the qualified voters residing in any local tax district established under this article, the same shall be indorsed and approved by the county board of education, and the

board of county commissioners shall order another election in the district for submitting the question of revoking the tax and abolishing the district, to be held under the provisions prescribed in this act for holding other elections. It shall be the duty of the board of education to indorse the petition when presented, containing the proper number of names of qualified voters, and this provision is made mandatory, and the board is allowed no discretion to refuse to indorse the same when so presented. If at the election a majority of those who shall vote thereon in the district shall vote "Against Local Tax," the tax shall be deemed revoked and shall not be levied, and the district shall be discontinued: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnson, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes counties, petition of twenty-five per cent (25%) of the number of registered voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient: Provided, further, that in said counties, this section shall not apply to that part of such tax, if any, in said district as may be necessary to pay the interest on or amortization of any bonded or other indebtedness incurred in consequence of the voting of said special tax district but to that extent, and to that extent only, shall said special tax district be maintained. (1923, c. 136, s. 227; 1931, c. 372; 1949, c. 918, s. 4; C. S. 5647.)

Editor's Note.—Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 115-196. Enlarging boundaries of district within incorporated city or town.—The boundaries of a district situated entirely within the corporate limits of a city or town, but not coterminous with such city or town, may be enlarged so as to make the district coterminous with such city or town either in the manner prescribed by this section or in the manner prescribed by § 115-192. Provided, however, that no district shall be enlarged under this section if the new territory necessary to be added to such district, in order to make it coterminous with such city or town, has any bonded debt incurred for school purposes, other than debt payable by taxation of all taxable property in such district and such new territory. In cases where the local annual tax voted to supplement the funds of the nine months public school term is of the same rate in such district and in the new territory necessary to be added to such district in order to make the district coterminous with such city or town, the county board of education shall have power to enlarge the boundaries of the district as aforesaid. In cases where such tax rates are not the same, the boundaries of the district shall become so enlarged upon the adoption of a proposition for such enlargement by a majority of those who shall vote thereon in such new territory. The governing body of such city or town may at any time, upon petition of the board of education or other governing body of such district, or upon

its own initiative if the governing body of the city or town is also the governing body of the district, submit the question of enlarging the district as aforesaid to the qualified voters of such new territory proposed to be added to such district at any general or municipal election or at a special election called for said purpose. Such an election may be ordered and held and a new registration for said election provided under the rules governing elections for local taxes as provided under the article, except that the election and registration shall be ordered by and held under the supervision of and the result of the election determined by the governing body of such city or town. The ballots to be used in said election shall have printed or written thereon the words: "For the enlargement of school district, pursuant to section two hundred and thirty of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, as amended," and "Against the enlargement of school district, pursuant to section two hundred and thirty of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, as amended." If a majority of those who shall vote thereon in such new territory proposed to be added to such district shall vote in favor of such enlargement, said district shall thereupon become coterminous with said city or town, and there shall be levied annually in such new territory all taxes previously voted in said district for the purpose of supplementing the funds for the nine months public school term for said district and for the purpose of paying the principal or interest of any bonds or other indebtedness previously issued or incurred by said district; and a vote in favor of such enlargement shall be deemed and held to be a vote in favor of the levying of such taxes. The validity of the said election and of the registration for said election and of the correctness of the determination of the result of said election shall not be open to question except in an action or proceeding commenced within thirty days after the determination of the result of said election. At the same time that said election is held, it shall be lawful to hold an election in the entire territory of said city or town on the question of issuing bonds of said city or town or of said school district as so enlarged, for school purposes, and levying sufficient tax for the payment of said bonds, or on the question of levying a local annual tax on all taxable property in said city or town or in said school district as so enlarged, to supplement the funds for the nine months public school term for said district, in addition to taxes for the payment of bonds, in the same manner that would be lawful if said district had been so enlarged prior to the submission of said questions. One registration may be provided for all of said simultaneous elections. (1923, c. 136, s. 230; 1925, c. 143, s. 3; 1943, c. 255, s. 2; 1949, c. 918, s. 5; C. S. 5650.)

Editor's Note.—Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 115-198. District already created out of portion of two or more counties.—Districts that have already been created out of portions of two or more counties may be incorporated in the following manner: Upon petition of the county board

of education of each county, calling for an election, the commissioners of each county shall call an election which shall be conducted in all respects as an election for voting local taxes. The ballots to be used in said election shall have written or printed thereon the words, "For Incorporation," and, "Against Incorporation." If a majority of those who shall vote thereon in the portion in each county shall cast their ballots for incorporation, the district is thereby incorporated and shall possess all the authority of incorporated districts as provided in this article. (1923, c. 136, s. 233; 1949, c. 918, s. 6; C. S. 5652.)

Editor's Note.—Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." See 27 N. C. Law Rev. 454.

Art. 23. Special School Taxing Districts.

§ 115-204. Special school taxing districts.—If a majority of the qualified electors voting in the special school taxing district shall vote in favor of the special school tax, then it shall operate to repeal all school taxes theretofore voted in any local tax district located within said special school taxing district, except such taxes as may have been voted in said local tax district to pay the interest on bonds and to retire bonds outstanding. But the county board of education shall have the authority to assume all indebtedness, bonded and otherwise, of said local tax district and pay all or a part of the interest and installments out of the revenue derived from the rate voted in the special school taxing district: Provided, the revenue is sufficient to equalize educational advantages and pay all or a part of the interest and installments on said bonds. (1923, c. 136, s. 238; 1949, c. 1033, s. 1; C. S. 5659.)

Editor's Note.—The 1949 amendment inserted the word "voting" in line two. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

Art. 24. County Tax for Supplement in Which Part of Local Taxes May Be Retained.

§ 115-209. Maximum tax levy.—In the event that a majority of the qualified voters voting at said election shall vote in favor of a special county tax, said tax shall be in addition to all taxes theretofore voted in any local tax district except as provided in § 115-210. The maximum rate voted shall be annually levied and collected each year in the same manner and at the same time as other taxes of the county are levied and collected, unless the county board of education shall petition for a lower rate. In that event the county commissioners shall levy the rate requested. (1923, c. 136, s. 244; 1949, c. 1033, s. 1; C. S. 5665.)

Editor's Note.—The 1949 amendment inserted the word "voting" in line two. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

SUBCHAPTER IX. BONDS AND LOANS FOR BUILDING SCHOOLHOUSES.

Art. 26. Funding or Refunding Loans from State Literary and Special Building Funds.

§ 115-215. State board of education authorized to accept funding or refunding bonds of counties for loans; approval by local government commission.

Editor's Note.—For act validating notes evidencing loans from special building funds, see Session Laws 1945, c. 404.

Art. 28. Loans from State Literary Fund.

§ 115-220. Loans by state board from state literary fund.

Editor's Note.—For act validating notes evidencing loans from literary fund, see Session Laws 1945, c. 404.

§ 115-224. Appropriation from loan fund for free plans and inspection of school buildings.—The state board of education may annually set aside and use out of the funds accruing to the interest of said state loan fund a sum not exceeding seven thousand five hundred dollars (\$17,500.00), to be used for providing plans for modern school buildings to be furnished free of charge to districts, for providing proper inspection of school buildings and the use of state funds, and for such other purposes as said board may determine, to secure the erection of a better type of school building and better administration of said state loan fund. (1923, c. 136, s. 277; 1947, c. 636; C. S. 5687.)

Editor's Note.—The 1947 amendment increased the amount in line five from \$12,000 to \$17,500.

SUBCHAPTER XII. SCHOOL DISTRICT TAXES AND SINKING FUNDS.

Art. 33. Transfer to County Treasurer.

§ 115-240. All sinking fund monies and securities likewise directed to county treasurers.

Legislature May Change Custodian of Fund.—Ordinarily the county treasurer is the proper custodian of all sinking fund securities, including school sinking funds and securities held for the retirement of term bonds where the county has assumed the payment of such bonds, but the general assembly may designate or change the custodian of sinking fund securities. *Johnson v. Marrow*, 228 N. C. 58, 44 S. E. (2d) 468.

SUBCHAPTER XIII. VOCATIONAL EDUCATION.

Art. 34. Duties, Powers and Responsibilities of State Board of Education.

§ 115-241. Acceptance of benefits of federal vocational education act.

As to trade school for veterans, see Session Laws 1947, c. 839.

§ 115-247.1. Vocational agricultural high schools authorized to acquire lands for forest study.—With the approval of the state board for vocational education and the county superintendent of public instruction, the principal of any vocational agricultural high school is hereby authorized and empowered to acquire by gift, purchase or lease for not less than twenty years, a parcel of woodland or open land suitable for forest planting, or comprising both types of land; such parcel of land to contain not more than twenty acres.

2. Each deed to such land shall be made to "The County Board of Education" of the county in which the school concerned is located and the title shall be examined and approved by the county attorney.

3. Any school forest thus acquired shall be placed under the management of the department of vocational agriculture of the school, to be handled in accordance with plans approved by some available publicly employed forester. (1945, c. 1035.)

§ 115-247.2. Use of unexpended funds, from sale of certain school bonds, by county au-

thorities, for vocational education.—The boards of county commissioners and the county boards of education of the state now having on hand unexpended funds derived from the sale of school bonds issued without a vote of the people subsequent to August 1st, 1946, and prior to December 1st, 1946, are authorized in their discretion to expend such funds for the erection, construction, and equipping of vocational educational buildings for the teaching of vocational agriculture and allied subjects. Such buildings may be erected and constructed at such place or places in the county as the county board of education of such county may designate, notwithstanding that the bond ordinance adopted, authorizing the issuance of such bonds, may have designated the place or places for such new additional school buildings to be erected and equipped. (1947, c. 791.)

Art. 34A. Area Vocational Schools.

§ 115-248.1. Commission to study needs for area vocational schools.—The governor of North Carolina is hereby authorized to appoint a commission of eight persons, one of whom shall be designated as chairman. The state director of vocational education shall serve as ex officio member of said commission. The said commission shall investigate the feasibility of establishing one or more area vocational schools in North Carolina. (1945, c. 1011, s. 1.)

§ 115-248.2. Commission to report its findings and recommendations to governor.—The report of the commission shall include findings of fact as to the necessity of such school or schools, the probable cost of the establishment and maintenance; the availability of funds from all sources; the types of courses of study needed and recommended; and all other information which will be helpful to the governor in determining whether or not such school or schools shall be established. The commission shall from time to time as it makes progress file its report with the governor of North Carolina, setting forth its findings, conclusions, and recommendations. (1945, c. 1011, s. 2.)

§ 115-248.3. Establishment of needed schools authorized; authority of state board of education.—If, from the reports filed by the commission, the governor finds that the need for such school or schools exists, he, in his discretion, may then authorize the state board of education acting as a state board for vocational education, to establish one or more such schools in accordance with the recommendations and conclusions of the commission. For this purpose, the state board of education acting as a state board for vocational education shall use such funds as the governor and council may make available from the vocational education funds, federal grants, private donations, or gifts of land, buildings and equipment which may be available for the establishment, operation and maintenance of said school or schools. The state board of education acting as a state board for vocational education, shall promulgate needful rules and regulations to establish and operate such school or schools in accordance with the state plans for vocational education, and may utilize the already established administrative units or may establish other ad-

ministrative units as in its judgment seem necessary for meeting the needs of the situation. When such school or schools may be established, the state board of education acting as a state board for vocational education shall operate and manage the said school or schools, employ necessary personnel, fix salaries, and do all things necessary and needful to operate the said school or schools. (1945, c. 1011, s. 3.)

Art. 36. Textile Training School.

§ 115-255.1. Creation of board of trustees; members and terms of office; no compensation.—The affairs of the North Carolina vocational textile school, created under authority of this article, shall be managed by a board of trustees composed of six members, who shall be appointed by the governor, and the state director of vocational education as ex officio member thereof. The terms of office of the trustees appointed by the governor shall be as follows: two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said board, the vacancy shall be filled by appointment by the governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the governor shall serve without compensation. (1945, c. 806, s. 1.)

§ 115-255.2. Powers of board.—The said board of trustees shall have the power to take over and receive all of the property of the North Carolina vocational textile school and shall have the authority to direct and manage the affairs of said school, and, within available appropriations therefor, appoint a managing head and such other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of said school, shall have the right to accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of said school. (1945, c. 806, s. 2.)

§ 115-255.3. When board to begin functioning; succeeds to powers and authority of former board.—The board of trustees appointed under the authority of § 115-255.1 shall begin their term of office on the first day of July, one thousand nine hundred and forty-five, and shall succeed to all the powers and authority of the board created under authority of chapter 360 of the Public Laws of 1941. (1945, c. 806, s. 3.)

§ 115-256. Persons eligible to attend institute; subject taught.—Persons eligible for attendance upon this institution shall be at least sixteen years of age and legal residents of the state of North Carolina: Provided, that out of state students not to exceed ten per cent (10%) of total enrollment may be enrolled when vacancies exist, upon payment of tuition, the amount of the tuition to be determined by the board of trustees. The money thus collected is to be deposited in the treasury of the North Carolina vocational textile school, to be used as needed in the operation of the school. The institution shall teach the general principles

and practices of the textile manufacturing and related subjects. (1941, c. 360, s. 3; 1947, c. 843.)

Editor's Note.—The 1947 amendment added the proviso at the end of the first sentence and inserted the second sentence.

Art. 36A. Vocational Training in Building Trades.

§ 115-257.2. Use of funds for purchase of building sites and materials.—Local school administrative units are authorized to use local tax funds or other local funds available for the support of vocational education to purchase suitable building sites on which dwellings or other buildings are to be constructed by vocational building trades classes. Such school administrative units are authorized to use such funds to pay any fees necessary in securing and recording deeds to such property and to purchase all materials needed to complete the construction of buildings by vocational building trades classes: Provided, however, that the cost of materials for any one project shall not exceed \$7,000.00 and not more than one project may be undertaken within one school year. (1951, c. 1007, s. 1.)

Local Modification.—Durham, Guilford, Rockingham, Ruth-
erford: 1951, c. 1007, s. 6½.

§ 115-257.3. Use of funds for acquiring skilled services.—Local school administrative units are authorized to expend such funds in acquiring skilled services, including electrical, plumbing, heating, sewer, water, transportation, grading and landscaping needed in the construction and completion of buildings beyond those which can be supplied by the students in such vocational trades classes. (1951, c. 1007, s. 2.)

§ 115-257.4. Sale of buildings constructed by building trades classes; disposition of proceeds.—When any such building is completed, the governing body of the local school administrative unit, upon finding that such building is not needed for public school purposes, shall sell the same at public auction after due advertisement of said property for the period of time and in like manner as to places and publication in newspapers as now prescribed for sales of real estate under deeds of trust and if no raised or increased bid is made within ten (10) days after the date of sale, the chairman and secretary of the governing body of such unit may execute a deed to the purchaser. The proceeds from the sale of such projects may be kept in a revolving fund by said unit to be used in succeeding years to finance similar building projects; provided the governing board of the administrative unit may allocate from the profits from such projects funds to purchase equipment needed by the building trades classes. In case this type of activity is abandoned, the moneys accumulated shall be paid into the school fund of the county or city administrative unit from which the original appropriation was made. After the sale of any such property, as herein provided for, has been had and in the opinion of the governing board the amount offered for the property, either at the first or any subsequent sale, is inadequate, then, upon a finding of such fact by the board, the said board is authorized to reject such bid. (1951, c. 1007, s. 3.)

§ 115-257.5. Advisory committee on construction of projects.—Five persons residing within

the administrative unit shall be appointed by the governing board of the administrative unit to serve as an advisory committee on the construction of projects described in this article. (1951, c. 1007, s. 4.)

§ 115-257.6. Approval of advisory committee required.—No project of a nature described in this article shall be undertaken without the approval of a majority of the advisory committee referred to in § 115-257.5. (1951, c. 1007, s. 5.)

§ 115-257.7. Current projects not limited or prohibited.—Nothing in this article shall be construed as limiting or prohibiting any projects now being carried on in vocational departments and utilizing resources or funds not specifically mentioned herein. (1951, c. 1007, s. 6.)

SUBCHAPTER XIV. TEXTBOOKS AND PUBLIC LIBRARIES.

Art. 37. Textbooks for Elementary Grades.

§ 115-258. State board of education adopts textbooks.

For subsequent statute affecting this article, see §§ 115-278.1 et seq.

§ 115-263: Repealed by Session Laws 1945, c. 707, § 12.

§ 115-265: Repealed by Session Laws 1945, c. 707, § 12.

Art. 38. Textbooks for High Schools.

§ 115-272. State board of education may adopt textbooks.

For subsequent statute affecting this article, see §§ 115-278.1 et seq.

§ 115-273: Repealed by Session Laws 1945, c. 707, § 12.

Art. 38A. Selection and Adoption of Textbooks.

§ 115-278.1. State board of education to select and adopt textbooks; basal textbooks.—The state board of education is hereby authorized to "select and adopt" for the exclusive use in the public schools of North Carolina, textbooks and publications, instructional materials, needed for instructional purposes, in each grade and on each subject matter, in which instruction is required by law. It shall adopt for a period of not less than five years, two basal primers, or readers for each of the first three grades, and one basal book or series of books on all other subjects required to be taught in the first eight grades, and two basal books for all subjects taught in the high school: Provided not more than three basal books may be adopted on the subject of North Carolina history. (1945, c. 707, s. 1.)

Editor's Note.—The act from which this article was codified become effective April 1, 1945.

§ 115-278.2. Continuance and discontinuance of contracts with publishers; procedure for change of textbook.—At the expiration of existing or future contracts, the board may, upon approval of the publisher, continue such contract in force from year to year for a period not exceeding five years. The superintendent may at any time recommend to the board that a given book is un-

satisfactory for the schools whereupon the board may call for a new selection and adoption.

In the event a change of any textbook is required by vote of the board, the publisher shall be given ninety (90) days notice prior to the first day of May, at the expiration of which time the board is authorized to adopt a new book or books on said subject. The publisher desiring to terminate his contract which has been extended beyond the original contract period shall give notice to the board ninety (90) days prior to the first day of May. The board may then proceed to a new adoption. (1945, c. 707, s. 2.)

§ 115-278.3. Board to adopt standard courses of study.—Upon recommendation of the superintendent the board shall adopt a standard course of study for each grade in the elementary school and in the high school. These courses of study shall set forth what subjects shall be taught in each grade, and outline the number of basal and supplementary books on each subject to be used in each grade. (1945, c. 707, s. 3.)

§ 115-278.4. Appointment of textbook commission; members and chairman; compensation.—The governor and superintendent may appoint a textbook commission of twelve members who shall hold office for four years, or until their successors are elected and qualified. The governor shall fill all vacancies by appointment for the unexpired term. Seven of the members shall be outstanding teachers or principals in the elementary grades; five shall be outstanding teachers or principals in the high school grades: Provided one of the members may be a county or city superintendent. The commission shall elect a chairman, subject to the approval of the governor and the state superintendent. The members shall be paid a per diem and expenses as approved by the board. (1945, c. 707, s. 4.)

§ 115-278.5. Commission to evaluate books offered for adoption.—The members of the commission who are teachers or principals in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers or principals in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption in the field in which the member teaches. Special consideration shall be given in the evaluation report as to the adaptability of the book to the grade for which it is offered, the content or subject matter, and other criteria prescribed by the board.

All evaluation reports shall be signed by the member making the report and filed alphabetically with the board not later than a day certain as fixed by the board when the call for adoption is made. (1945, c. 707, s. 5.)

§ 115-278.6. Selection of textbooks by board.—At the next meeting of the board following the filing of the reports the textbooks commission shall meet with the board and jointly they shall examine the reports. The board shall then select from the evaluated list all books which satisfy the board that such books will meet the teaching requirements of the North Carolina public schools

in the grade or grades for which they are offered. The board shall then request sealed bids from the publishers of all books so selected. (1945, c. 707, s. 6.)

§ 115-278.7. Adoption of textbooks and contracts with publishers.—The sealed bids of the publishers shall be opened at the next regular meeting of the board in the presence of the board. The board may then adopt one of the books offered and enter into a contract with the publisher for such adopted book. The board may refuse to adopt any of the books offered at the prices bid and call for new bids. (1945, c. 707, s. 7.)

§ 115-278.8. Charge for rentals.—The board shall not charge a rental fee for books, supplies, and materials used in the public schools in excess of the actual cost to the state of the handling and administration of such rentals. (1945, c. 707, s. 8.)

§ 115-278.9. Board to regulate matters affecting validity of contracts; approval of attorney general.—The board shall make all needful rules and regulations with reference to asking for bids, notifying publishers as to calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation clauses and such other material matters as may affect the validity of the contracts. All such contracts shall be subject to the approval of the attorney general as to form and legality. (1945, c. 707, s. 9.)

§ 115-278.10. Purpose of article.—It is the purpose of this article to enable the board to secure the best textbooks obtainable within the limits of available funds for use in the public schools of North Carolina; that all books offered shall be carefully considered; and that records shall be kept of all books offered and an evaluation report of such books filed in a permanent record. (1945, c. 707, s. 10.)

§ 115-278.11. Definitions.—As used in this article, the word "board" shall mean the state board of education. "Superintendent" shall mean the state superintendent of public instruction. (1945, c. 707, s. 11.)

Art. 40. State Board of Education.

§ 115-293. Powers and duties of board.

(1) Acquire by contract and/or purchase such textbooks and instructional supplies which are or may be on the adopted list of the state of North Carolina, and to purchase by contract as now provided by law material, supplies, and equipment which the board may find necessary to meet the needs of the public school system of the state and to carry out the provisions of this article.

(2) Provide a system of distribution of said textbooks and supplies to the children in the public schools of the state, and distribute such books as are provided under the rental system without the use of any depository other than some agency of the state; to use warehouse facilities for the distribution of all the supplies, materials, and equipment authorized to be purchased in subsection (1) hereof.

(3) Provide for the free use, including the proper care and return thereof, of elementary basal textbooks to such grades of the elementary public schools of North Carolina as may be de-

terminated by the state board of education. Title to said books shall be vested in the state. For the purposes of this article, the elementary grades shall be considered the grades from one to eight, inclusive. The basal elementary textbooks in the hands of the state board of education, when this measure is put in effect, shall become a part of the stock of books needed to carry out the provisions of this article. Provided, the state board of education may furnish basal elementary textbooks on a rental basis in any or all elementary grades if it is deemed necessary.

(1945, c. 581, ss. 1, 2; c. 655.)

Editor's Note.—

The first 1945 amendment made changes in paragraphs (1) and (2), and the second 1945 amendment substituted "eight" for "seven" in line eight of paragraph (3). As the rest of the section was not affected by the amendments it is not set out.

For subsequent statute affecting this section, see §§ 115-278.1 et seq.

§ 115-296. Rentals paid to state treasury; disinfecting books.—All sums of money collected as rentals under the provisions of this article shall be paid monthly as collected into the state treasury, to be entered as a separate item known as the "state textbook rental fund." Disbursement of said funds shall only be had by order of the council of state: Provided, that the state board of education in conjunction with the state board of health shall adopt rules and regulations governing the use and fumigation for the regular disinfection of all textbooks used in the public schools of the state.

The governor, with the approval of the council of state, may, upon request and certification of the state board of education that surplus funds in the state textbook rental fund herein provided for are needed for the purchase of rental textbooks, transfer so much of said surplus to the general fund of the state to be used for the purchase of free textbooks and operating expenses as, in their judgment, may be necessary for the operation of the free textbook system now provided by law: Provided, any funds used for the free textbook system shall be the funds advanced to the state board of education for the operation of the rental system as outlined in chapter four hundred and twenty-two, public laws of one thousand nine hundred and thirty-five, but payments made from the rental fund for the free textbook system shall not be in excess of the amount advanced under chapter four hundred and twenty-two.

All other revenues of the textbook rental system shall be used exclusively for providing textbooks, library books, and other instructional materials to the pupils that pay the rental fees, and to pay such expenses as are necessary in the operation of the rental system. (1935, c. 422, s. 4; 1937, c. 169, s. 1; 1943, cc. 391, 721, s. 9; 1945, c. 970, s. 13.)

Editor's Note.—

The 1945 amendment rewrote the second paragraph and added the third paragraph.

SUBCHAPTER XV. COMPULSORY ATTENDANCE IN SCHOOLS.

Art. 42. General Compulsory Attendance Law

§ 115-302. Parent or guardian required to keep child in school; exceptions.—Every parent, guard-

ian or other person in the state having charge or control of a child between the ages of seven and fifteen years during the twelve months following July first, one thousand nine hundred and forty-five, and between the ages of seven and sixteen years thereafter, shall cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session. The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse the child temporarily from attendance on account of sickness or distance of residence from the school, or other unavoidable cause which does not constitute truancy as defined by the state board of education. The term "school" as used in this section is defined to embrace all public schools and such private schools as have tutors or teachers and curricula that are approved by the county superintendent of public instruction or the State Board of Education.

All private schools receiving and instructing children of compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school or tutor refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district, town or city which the child shall be entitled to attend: Provided, instruction in a private school or by private tutor shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (1923, c. 136, s. 347; 1925, c. 226, s. 1; 1945, c. 826; 1949, c. 1033, s. 1; C. S. 5757.)

Editor's Note.—The 1945 amendment rewrote the first sentence of the first paragraph, and the 1949 amendment inserted in the fifth line of the second paragraph the words "and maintain such minimum curriculum standards."

§ 115-304. Attendance officers; reports; prosecutions.

Local Modification.—Polk: 1947, c. 348.

Art. 43. Compulsory Attendance of Deaf and Blind Children.

§ 115-309. Deaf and blind children to attend school; age limits; minimum attendance.—Every deaf and every blind child of sound mind in North Carolina who shall be qualified for admission into a state school for the deaf or the blind shall attend a school for the deaf or the blind for a term of nine months each year between the ages of six and eighteen years. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and eighteen years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf as is herein provided: Provided, that the board of directors of any school for the deaf or blind may exempt any such child from attendance at any session or during any year, and may discharge from their custody any such blind or deaf child whenever such discharge seems necessary or proper. Whenever a deaf or blind child shall reach the age of eighteen and is still unable to become self-supporting because of its defects, such a child shall

continue in said school until it reaches the age of twenty-one, unless it becomes self-supporting sooner. (1923, c. 136, s. 354; 1945, c. 497, s. 1; C. S. 5764.)

Editor's Note.—The 1945 amendment substituted "six" for "seven" in lines six and nine.

§ 115-310. Parents, etc., failing to send deaf child to school guilty of misdemeanor; provisos. —The parents, guardians, or custodians of any deaf children between the ages of six and eighteen years failing to send such deaf child or children to some school for instruction, as provided in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year said deaf child is kept out of school, between the ages herein provided; provided, that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf, by and with the approval of the executive committee of such institution, shall in his and their discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution whereof they have charge. (1923, c. 136, s. 355; 1945, c. 497, s. 2; 1947, c. 388, s. 1; C. S. 5765.)

Editor's Note.—The 1945 amendment struck out the former provision "that parents, guardians, or custodians may elect two years between the ages of seven and eighteen years that a deaf child or children may remain out of school."

The 1947 amendment substituted "six" for "seven" in line two.

§ 115-311. Parents, etc., failing to send blind child to school, guilty of misdemeanor; provisos. —The parents, guardians, or custodians of any blind child or children between the ages of six and eighteen years failing to send such child or children to some school for the instruction of the blind shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year that such child or children shall be kept out of school between the ages specified: Provided, (1) that this section shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the authorities of some school for the instruction of the blind shall serve written notice on such parents, guardians, or custodians directing that such child be sent to the school whereof they have charge; and (2) that the authorities of the state school for the blind and the deaf shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits (1923, c. 136, s. 356; 1947, c. 388, s. 2; C. S. 5766.)

Editor's Note.—The 1947 amendment substituted "six" for "seven" in line two.

SUBCHAPTER XXI. COMPENSATION TO CHILDREN INJURED IN SCHOOL BUSES.

Art. 49. Certain Injuries to School Children Compensable.

§ 115-341. Payment of medical or funeral expenses to parents or custodians of children.—The state board of education is hereby authorized and directed to pay out of said sum provided for this purpose to the parent, guardian, executor, or ad-

ministrator of any school child, who may be injured and/or whose death results from injuries received while such child is riding on a school bus to and from the public schools of the State, or from the operation of said bus on the school grounds or in transporting children to and from the public schools of the State, medical, surgical, hospital, and funeral expenses incurred on account of such injuries and/or death of such child in an amount not to exceed the sum of six hundred and no one-hundredths dollars (\$600.00). (1935, c. 245, s. 2; 1943, c. 721, s. 7; 1945, c. 970, s. 3.)

Editor's Note.—

The 1945 amendment inserted the words "or from the operation of said bus on the school grounds or in transporting children to and from the public schools of the state."

SUBCHAPTER XXII. SCHOOL LAW OF 1939.

Art. 50. The School Machinery Act.

§ 115-347. Purpose of the law. —The purpose of this subchapter is to provide for the administration and operation of a uniform system of public schools of the state for the term of nine months without the levy of an ad valorem tax therefor, and it is the purpose of this general assembly to change the policy heretofore followed by previous general assemblies of re-enacting biennially the School Machinery Act, and this subchapter shall remain in force until repealed or amended by subsequent acts of the general assembly. It is also the purpose of this subchapter to establish a minimum program of education in order that substantial equality of educational opportunity may be available to all children of the state. (1939, c. 358, s. 1(a); 1943, c. 255, s. 2; 1949, c. 1116, s. 1.)

Editor's Note.—The 1949 amendment added the second sentence.

Session Laws 1945, c. 530, s. 12, substituted the word "controller" for the word "comptroller" wherever appearing in this article.

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-351. Length of school term; school month defined; payment of salaries.—The minimum six months' school term required by article IX of the Constitution is hereby extended to embrace a total of one hundred and eighty days of school in order that there shall be operated in every county and district in the state a uniform term of nine months: Provided, that the state board of education or the governing body of any administrative unit, with the approval of the state board of education, may suspend the operation of any school or schools in such units, not to exceed a period of sixty days of said term of one hundred and eighty days, when in the sound judgment of the state board of education or the governing body of any administrative unit, with the approval of the state board of education, the low average of daily attendance in any school justifies such suspension, or when the state board of education or the governing body of any administrative unit, with the approval of the state board of education, shall find that the needs of agriculture, or any other condition, may make such suspension necessary within such unit or any district thereof: Provided further, that when the operation of any

school is suspended no teacher therein shall be entitled to pay for any portion of the suspended term: Provided, that all schools served by the same school bus or busses shall have the same opening date.

Provided that for the one thousand nine hundred and forty-seven—one thousand nine hundred and forty-eight and one thousand nine hundred and forty-eight—one thousand nine hundred and forty-nine school terms the one hundred and eighty days (180) may be reduced to one hundred and seventy days (170) by the governor as director of the budget if in his opinion the revenues decrease to such an extent that such action would be justified.

A school month shall consist of twenty teaching days. Schools shall not be taught on Saturdays unless the needs of agriculture, or other conditions, in the unit or district make it desirable that schools be taught on such days. In order that the total term of one hundred and eighty days might be completed in a shorter time than nine calendar months, when the needs of agriculture require it, the governing body of any administrative unit may require that schools shall be taught on legal holidays, except Sundays, but nothing herein contained shall prevent the inclusion of teaching on any legal holiday in a school month in accordance with the custom and practice of any such district, or as may be otherwise ordered by the governing body of such administrative unit.

Salary warrants for the payment of all state teachers, principals, and others employed for the school term shall be issued each month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month: Provided, that teachers may be paid in twelve equal monthly installments in such administrative units as shall request the same of the state board of education on or before October first of each school year. Before such request shall be filed, it shall be approved by the governing board, the superintendent, and a majority of the teachers in said administrative unit. The payment of the annual salary in twelve installments instead of nine shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period less than nine months.

(1) Principals in the public schools of the state shall be employed for a term of ten (10) months and shall be paid on the basis of ten (10) months' service.

(2) The state board of education is authorized to prescribe what portion of said extra month shall apply before the opening of the school term and after the closing of the school year and to fix and regulate the duties of principals during said extra month.

(3) The state board of education may, in its discretion and under such rules and regulations as it may prescribe, provide for the payment of the salaries of regular state allotted teachers in ten equal monthly payments. It shall also provide for the salaries of vocational teachers in such monthly payments as may be desirable and in accordance with rules and regulations prescribed for the operation of the vocational program and

in accordance with federal laws and regulations relating to such funds.

Full authority is hereby given to the State Board of Education during any period of emergency to order general and, if necessary, extended recess or adjournment of the public schools in any section of the state where the planting or harvesting of crops or any other emergency conditions make such action necessary. (1939, c. 358, s. 4; 1943, c. 255, s. 1; 1945, c. 521; 1947, c. 1077, s. 1949, c. 1116, s. 2.)

The 1945 amendment inserted paragraphs (1) and (2) following the fourth paragraph. The 1947 amendment struck out the words "which shall request the same" formerly appearing after the word "state" in line six of the first paragraph, and added the second proviso thereto. The amendment changed the years at the beginning of the second paragraph from 1943-1944 and 1944-1945 to 1947-1948 and 1948-1949.

The 1949 amendment inserted paragraph (3).

For comment on the 1943 amendment, see 21 N. C. Law Rev. 361.

§ 115-352. School organization.—All school districts, special tax, special charter, or otherwise, as constituted on May 15, 1933, are hereby declared non-existent as of that date; and it shall be unlawful for any taxes to be levied in said district for school operating purposes except as provided in this article. The state board of education, in making provision for the operation of the schools, shall classify each county as an administrative unit, and shall, with the advice of the county boards of education, make a careful study of the district organization as the same was constituted under the authority of § 4 of chapter 562 of the Public Laws of 1933, and as modified by subsequent school machinery act. The state board of education may modify such district organization when it is deemed necessary for the economical administration and operation of the state school system, and it shall determine whether there shall be operated in such district an elementary or a union school. Provisions shall not be made for a high school with an average daily attendance of less than sixty pupils, nor an elementary school with an average daily attendance of less than twenty-five pupils, unless a careful survey by the state superintendent of public instruction and the state board of education reveals that geographic or other conditions make it impracticable to provide for them otherwise. Funds shall not be made available for such schools until the said survey has been completed and such schools have been set up by the said board. School children shall attend school within the district in which they reside unless assigned elsewhere by the state board of education.

It shall be within the discretion of the state board of education, wherever it shall appear to be more economical for the efficient operation of the schools, to transfer children living in one administrative unit or district to another administrative unit or district for the full term of such school without the payment of tuition: Provided, that sufficient space is available in the buildings of such unit or district to which the said children are transferred: Provided further, the provision as to the nonpayment of tuition shall not apply to children who have not been transferred as set out in this section.

City administrative units as now constituted shall be dealt with by the state school authorities

in all matters of school administration in the same way and manner as are county administrative units: Provided, that the state board of education may, in its discretion, alter the boundaries of any city administrative unit and establish additional city administrative units when, in the opinion of the state board of education, such change is desirable for better school administration. Provided, that in all city administrative units as now constituted the trustees of the said special charter districts, included in said city administrative unit, and their duly elected successors, shall be retained as the governing body of such district; and the title to all property of the said special charter district shall remain with such trustees, or their duly chosen successors; and the title to all school property hereafter acquired or constructed within the said city administrative unit, shall be taken and held in the name of the trustees of the said city administrative unit; and the county board of commissioners of any county shall provide funds for the erection or repair of necessary school buildings on property, the title to which is held by the board of trustees as aforesaid, and the provisions of § 115-88, to the extent in conflict herewith, are hereby repealed: Provided, that nothing in this subchapter shall prevent city administrative units, as now established, from consolidating with the county administrative unit in which such city administrative unit is located, upon petition of the trustees of the said city administrative unit and the approval of the county board of education and the county board of commissioners in said county: Provided, further, that nothing in this subchapter shall affect the right of any special charter district, or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by existing law, and nothing herein shall be construed to restrict the county board of education and/or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by existing law.

The board of trustees for any special charter district in any city administrative unit shall be appointed as now provided by law. If no provision is now made by law for the filling of vacancies in the membership of such board of trustees, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to such property shall be vested in the county board of education of the county embracing such special charter district. (1939, c. 358, s. 5; 1943, c. 721, s. 8; 1945, c. 970, s. 4; 1947, c. 1077, ss. 3, 6.)

Cross Reference.—

As to authority of state board of education to alter or dissolve city school administrative units, see § 115-361.

Editor's Note.—

The 1945 amendment inserted the first proviso in the third paragraph. The 1947 amendment made changes in said proviso and added the last sentence of the first paragraph.

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527.

§ 115-353. Administrative officers.

At a meeting to be held the first Monday in April, one thousand nine hundred thirty-nine, or

as soon thereafter as practicable, and biennially thereafter during the month of April, the various county boards of education named by the General Assembly which convened in January of such year shall meet and elect a county superintendent of schools, subject to the approval of the state superintendent of public instruction and the state board of education, who shall take office July first and shall serve for a period of two years, or until his successor is elected and qualified. The county board of education shall give public notice of the date of the election in a paper published or circulating in the county and shall post a notice of the same at the courthouse door at least fifteen days before the date of the election. A certification to the county board of education by the state superintendent of public instruction showing that the person proposed for the office of county superintendent of schools is a graduate of a four year standard college, or at the present time holds a superintendent's certificate, and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious disease, shall make any citizen of the state eligible for this office. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the state superintendent of public instruction.

(1951, c. 1027, s. 3½.)

Local Modification.—Currituck: 1945, c. 899.

Editor's Note.—

The 1951 amendment inserted the words "named by the General Assembly which convened in January of such year" in the third paragraph. As only the third paragraph was affected by the amendment, the rest of the section is not set out.

For act making this section applicable to Tyrrell county in all respects on and after July 1, 1953, see Session Laws 1951, c. 1093.

Quoted in *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322.

§ 115-354. School committees.

Provided, further, that such teacher or principal shall give notice to the superintendent of schools of the administrative unit in which said teacher or principal is employed, within ten days after notice of reelection, of his or her acceptance of employment for the following year: Provided, further, that the county board of education may appoint an advisory committee of three members for each school building in the said school district, who shall care for the school property and perform such other duties as may be defined by the county board of education. (1939, c. 358, s. 7; 1941, c. 267, s. 2; 1943, c. 721, s. 8; 1945, c. 970, s. 5.)

Local Modification.—Montgomery: 1951, c. 718.

Editor's Note.—

The 1945 amendment substituted, in the next to the last proviso in the second paragraph, the words "notice of reelection" for the words "the close of school." As the rest of the section was not affected by the amendment only this proviso and the last one are set out.

Removal of Committeeman.—A school committeeman for a district, although appointed by the county board of education, holds for a definite term of two years and is not removable at the will or caprice of the county board of education, but may be removed only for cause after notice and an opportunity to be heard. *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589.

Notice of acceptance of a teacher contract or an extension thereof must be given within the time prescribed by this section in order to have the benefit of this provision extending the teacher's contract for another year. *Kirby*

v. Stokes County Board of Education, 230 N. C. 619, 55 S. E. (2d) 322.

Cited in Davis v. Moseley, 230 N. C. 645, 55 S. E. (2d) 329.

§ 115-355. Organization statement and allotment of teachers.—On or before the twentieth day of May in each year, the several administrative officers shall present to the state board of education a certified statement showing the organization of the schools in their respective units, together with such other information as said board may require. The organization statement as filed for each administrative unit shall indicate the length of term the state is requested to operate the various schools for the following school year, and the state shall base its allotment of funds upon such request. On the basis of such organization statement, together with all other available information, and under such rules and regulations as the state board of education may promulgate, the state board of education shall determine for each administrative unit, by districts and races, the number of elementary and high school teachers to be included in the state budget on the basis of the average daily attendance figures of the continuous six months period of the first seven months of the preceding year during which continuous six months' period the average daily attendance was highest, provided that loss in attendance due to epidemics or apparent increase in attendance due to the establishment of army camps or other national defense activities shall be taken into consideration in the initial allotment of teachers: Provided, further, that the superintendent of an administrative unit shall not be included in the number of teachers and principals allotted on the basis of average daily attendance: Provided, further, that for the duration of the present war and for the first school term thereafter, it shall be the duty of the state board of education to provide any school in the state of North Carolina having four high school teachers or less and/or four elementary teachers or less not less than the same number of teachers as were allotted to said school for the school year of one thousand nine hundred and forty-four—one thousand nine hundred and forty-five.

Provided, further, that in cases where there are less than twenty (20) pupils per teacher in any school a reduction in the number of teachers may be made.

The provisions of this section as to the allotment of teachers shall apply only to those schools where the reduction in enrollment is shown to be temporary as determined by the state board of education.

It shall be the duty of the governing body in each administrative unit, after the opening of the schools in said unit, to make a careful check of the school organization and to request the state board of education to make changes in the allocation of teachers to meet requirements of the said unit.

In order to provide for the enrichment and strengthening of educational opportunities for the children of the state, the state board of education is authorized in its discretion to make an additional allotment of teaching personnel to the county and city administrative units of the state, either jointly or separately as the state board of

education may prescribe, and such persons may be used in said administrative units as librarians, attendance assistants, special teachers or supervisors of instruction and for other special instructional service, such as art, music, adult education, special education, or industrial arts as may be authorized and approved by the state board of education. The salaries of such personnel shall be determined in accordance with the state salary schedule adopted by the state board of education. In addition, the state board of education is authorized and empowered, in its discretion, to make allotments of funds for clerical assistants for classified principals. (1939, c. 358, s. 8; 1941, c. 267, s. 3; 1943, c. 255, s. 2¾; 1943, c. 720, s. 1; 1943, c. 721, s. 8; 1945, c. 970, ss. 6, 14; 1949, c. 1116, s. 3.)

Editor's Note.—

The 1945 amendment inserted in lines twenty-one and twenty-two the words "first seven months of the." It also rewrote the third proviso in the first paragraph and inserted the last proviso therein.

The 1949 amendment added the last paragraph.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 361.

§ 115-356. Objects of expenditure.—The appropriation of state funds, as provided under the provisions of this subchapter, shall be used for meeting the costs of the operation of the public schools as determined by the state board of education, for the following items:

1. General Control:

- a. Salaries of superintendents
- b. Travel of superintendents
- c. Salaries of clerical assistants for superintendents
- d. Office expense of superintendents
- e. Per diem county boards of education in the sum of one hundred dollars (\$100.00) to each county
- f. Audit of school funds

2. Instructional Service:

- a. Salaries for white teachers, both elementary and high school
- b. Salaries for colored teachers, both elementary and high school
- c. Salaries of white principals
- d. Salaries of colored principals
- e. Instructional supplies

3. Operation of Plant:

- a. Wages of janitors
- b. Fuel
- c. Water, light and power
- d. Janitors' supplies
- e. Telephone expense

4. Auxiliary Agencies:

- a. Transportation
 - (1) Drivers and contracts
 - (2) Gas, oil, and grease
 - (3) Mechanics
 - (4) Parts, tires, and tubes
 - (5) Replacement busses
 - (6) Compensation for injuries and/or death of school children as now provided by law

b. Libraries

c. Health

d. Workmen's compensation for school employees

In allotting funds for the items of expenditures hereinbefore enumerated, provision shall be made for a school term of only one hundred eighty days.

The state board of education shall effect all economies possible in providing state funds for the objects of general control, operation of plant, and auxiliary agencies, and after such action shall have authority to increase or decrease on a uniform percentage basis the salary schedule of teachers, principals, and superintendents in order that the appropriation of state funds for the public schools may insure their operation for the length of term provided in this subchapter: Provided, however, that the state board of education and county boards of education for county administrative units and boards of trustees for city administrative units, shall have power and authority to promulgate rules by which school buildings may be used for other purposes.

The objects of expenditure designated as maintenance of plant and fixed charges shall be supplied from funds required by law to be placed to the credit of the public school funds of the county and derived from fines, forfeitures, penalties, dog taxes, and poll taxes, and from all other sources except state funds: Provided, that when necessity shall be shown, and upon the approval of the county board of education or the trustees of any city administrative unit, the state board of education may approve the use of such funds in any administrative unit to supplement any object or item of the current expense budget, including the supplementing of the teaching of vocational subjects; and in such cases the tax levying authorities of the county administrative unit shall make a sufficient tax levy to provide the necessary funds for maintenance of plant, fixed charges, and capital outlay: Provided, further, that the tax levying authorities in any county administrative unit may levy taxes to provide necessary funds for teaching vocational agriculture and home economics and trades and industrial vocational subjects supported in part from federal vocational educational funds: Provided, further, that nothing in this subchapter shall prevent the use of federal and/or privately donated funds which may be made available for the operation of the public schools under such regulations as the state board of education may provide. Provided further, that the tax levying authorities in any county administrative unit may levy taxes to provide necessary funds for attendance enforcement, supervision of instruction, health and physical education, clerical assistance, and accident insurance for school children transported by school bus: Provided, that nothing in this section be interpreted as repealing the present statutes requiring the state board of education's approval of local unit budgets. (1939, c. 358, s. 9; 1943, c. 255, s. 2; 1943, c. 721, s. 8; 1947, c. 1077, ss. 7, 7½.)

Editor's Note.—

The 1947 amendment added subhead 4d, struck out the words "with the approval of the state board of education" formerly appearing after the word "unit" in line twenty of the last paragraph and added the last two provisos thereto

§§ 115-357, 115-358: Repealed by Session Laws 1945, c. 530, s. 13.

§ 115-359. State standard salary schedule.

Provided, further, that no teacher or principal shall be required to attend summer school during the years one thousand nine hundred forty-five and one thousand nine hundred forty-six, and the certificate of such teacher or principal as may have been required to attend such school

shall not lapse but shall remain in full force and effect, and all credits earned by summer school and/or completing extension course or courses shall not be impaired, but shall continue in full force and effect.

(1945, c. 970, s. 7.)

Editor's Note.—

The 1945 amendment changed the years mentioned in the last proviso of the first paragraph. As the rest of the section was not affected by the amendment only this paragraph is set out.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 361.

Notification of the rejection of a teacher required by this section is complete when the letter containing it is both mailed and registered. *Davis v. Moseley*, 230 N. C. 645, 55 S. E. (2d) 329.

Where a letter containing notification of the rejection of a teacher is registered and mailed to her prior to the close of the school term during which she was employed, there is a compliance with this section and it is sufficient to terminate the contract even though not received by the teacher until after the expiration of the school term. *Davis v. Moseley*, 230 N. C. 645, 55 S. E. (2d) 329.

Quoted in *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322.

§ 115-359.1. Salary increments for experience to teachers, principals and superintendents serving in armed and auxiliary forces.—The state board of education, in fixing the state standard salary schedule of teachers, principals and superintendents as authorized by § 115-359, shall provide that teachers, principals and superintendents who entered the armed or auxiliary forces of the United States after September sixteenth, one thousand nine hundred and forty, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the positions of teachers, principals or superintendents in the public schools of the state after having been honorably discharged from the armed or auxiliary forces of the United States. (1945, c. 272.)

§ 115-361. Local supplements.—The county board of education in any county administrative unit and the school governing board in any city administrative unit, with the approval of the tax levying authorities in said county or city administrative unit and the state board of education, in order to operate schools of a higher standard than that provided by state support in said administrative unit having a school population of five hundred (500) or more, but in no event to provide for a term of more than one hundred eighty (180) days, may supplement the funds from state or county allotments available to said administrative unit: Provided, that before making any levy for supplementing said allotments, an election shall be held in said administrative unit or district to determine whether there shall be levied a tax to provide said supplemental funds, and to determine the maximum rate which may be levied therefor. Upon the request of the county board of education in a county administrative unit and/or the school governing authorities in a city administrative unit, the tax levying authorities of such unit shall provide for an election to be held under laws governing such elections as set forth in articles 22, 23 and 24 of this chapter: Provided, that the rate voted shall remain the maximum until revoked or changed by another election: Provided, further, that nothing herein contained shall

be construed to abolish any city administrative unit heretofore established under § 142-20 et seq.

Upon a written petition of a majority of the governing board of any district which has voted a supplementary tax, the county board of education, after approving the petition, shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of any such district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes as provided in this section: Provided, the local tax rate specified in the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the territory is to be added. If a majority of those who shall vote thereon in such new territory shall vote in favor of such tax, the new territory shall be and become a part of said district, and the term "local tax of the same rate" herein used shall include, in addition to the usual local tax, any tax levied to meet the interest and sinking fund of any bonds heretofore issued by the district proposed to be enlarged. In case a majority of those who shall vote thereon at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed. (1939, c. 358, s. 14; 1943, c. 721, s. 8; 1949, c. 918, s. 7; 1951, c. 1034, s. 1.)

Cross Reference.—As to ratification of enlargements of school districts pursuant to this section, see note to § 115-31.2.

Editor's Note.—Prior to the 1949 amendment the last two sentences of this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote."

The 1951 amendment inserted "five hundred (500)" for "one thousand (1000)" formerly appearing in the ninth and tenth lines.

For brief comment on the 1949 amendment, see 27 N. C. Law Rev. 454.

§ 115-361.1. Alteration or dissolution of city school administrative units; abolition of existing tax levies; new supplementary levies.—1. **Alteration or Dissolution and Formation of City School Administrative Units.**—The state board of education, upon the filing of a petition by any city administrative unit composed of two municipalities so requesting, may amend by enlarging, reducing, or dissolving any such city administrative unit and notwithstanding the population, create a new city administrative unit with boundaries coterminous with the boundaries of the township in which one of said municipalities is located and form a special school district containing the other municipality with boundaries coterminous with the township in which such municipality is situated.

2. **Abolition of Existing Tax Levies.**—Upon the altering by enlarging or reducing the boundaries of, or dissolving a city administrative unit as authorized in subsection one hereof, any existing special tax levy authorized by § 115-361 of the General Statutes of North Carolina shall terminate at the end of the fiscal year in which the boundaries of said unit are reduced or enlarged or the district dissolved.

3. **Special Tax Levies Authorized.**—A special tax levy is hereby authorized in any city administrative unit and a special tax levy of not more than fifteen cents (15c) on the one hundred dollar (\$100.00) valuation in a special school district

created as herein authorized for the purpose of operating schools of a higher standard in such districts than provided by state support: Provided, that before making any levy for supplementing state allotments, an election shall be held in such administrative unit or district to determine whether there shall be levied a tax to provide supplemental funds for the operation of the schools in the district and to determine the maximum rate which may be levied therefor. Such election to be held under existing election laws and regulations applicable to special school levies authorized in § 115-361 of the General Statutes of North Carolina for such supplements. (1945, c. 284.)

§ 115-362. County boards may supplement funds of any district for special purposes.

Local Modification.—Orange (White Cross and Carrboro elementary school districts): 1951, c. 748.

§ 115-363. Local budgets.—(a) The request for funds to supplement state school funds, as permitted under the above conditions, shall be filed with the tax levying authorities in each county and city administrative unit on or before the fifteenth day of June on forms provided by the state board of education. The tax levying authorities in such units may approve or disapprove this supplemental budget in whole or in part, and upon approval being given, the same shall be submitted to the state board of education, which shall have authority to approve or disapprove the same as to its financial soundness. In the event of approval by the state board of education, the same shall be shown in detail upon the minutes of said tax levying body, and a special levy shall be made therefor, and the tax receipt shall show upon the face thereof the purpose of said levy. (1951, c. 1027, s. 4.)

Editor's Note.—

The 1951 amendment struck out the words "any object or item contained therein" and substituted the words "the same as to its financial soundness" in lieu thereof in the twelfth and thirteenth lines of subsection (a). As only subsection (a) was affected by the amendment, the rest of the section is not set out.

§ 115-366. Bonds.—The state board of education shall, in its discretion, determine what state and local employees shall be required to give bonds for the protection of state school funds and for the faithful discharge of their duties as to such funds; and, in cases in which bonds are required, the state board of education is authorized to place the same and pay the premiums thereon.

The board of education in each county administrative unit and the trustees of each city administrative unit shall cause all persons authorized to draw or approve school checks or vouchers drawn on school funds, whether county, district, or special, and all persons who as employees of such administrative unit are authorized or permitted to receive any school funds from whatever source, and all persons responsible for or authorized to handle school property to be bonded for the faithful discharge of their duties as to such school funds in such amount as in the discretion of said governing authorities of said administrative unit shall deem sufficient for the protection of said school funds or property with surety by some surety company authorized to do business in the state of North Carolina. The amount deemed

necessary to cover the cost of such surety bond shall be included as an item in the general school budget of such school administrative unit and shall be paid from the funds provided therefor; but nothing in this section shall prevent the governing authorities of the respective administrative units from prorating the cost of such bond between the funds sought to be protected. (1939, c. 358, s. 18; 1943, c. 721, s. 8; 1945, c. 970, s. 8; 1949, c. 1082, s. 2; 1951, c. 1027, s. 5.)

Editor's Note.—The 1945 and 1949 amendments rewrote the first and second paragraphs, respectively.

The 1951 amendment inserted the words "as to such funds" in the fifth line of the first paragraph and the words "as to such school funds" in the eleventh line of the second paragraph.

§ 115-368. How school funds shall be paid out.

2. County and District Funds.—All county and district funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and secretary of the board of education for counties and the chairman and the secretary of the board of trustees for city administrative units and countersigned by such officer as the county government laws may require: Provided, the countersigning officer shall countersign warrants drawn as herein specified when such warrants are within the funds set up to the credit of and are within the budget amounts appropriated for the particular administrative unit. Upon the basis of budget approval and upon receiving the certificate of per capita enrollment as set out in § 115-363, the county auditor or accountant shall ascertain and determine the proportion of all taxes levied by the county which shall be apportionable to the county administrative unit and any city administrative unit therein. As taxes are collected within said county, the proportion thereof allocable to the county administrative unit and any city administrative unit in said county shall be set up to the credit of such administrative unit by the county accountant or auditor. All funds due to the county administrative unit set up and ascertained as aforesaid shall be paid out as hereinbefore provided, and all funds due any city administrative unit therein shall be paid out as hereinbefore provided.

The signatures of the chairman and secretary of the county board of education and the board of trustees of any city administrative unit required by subsections 1 and 2 hereof may be affixed to such warrants by a signature machine. When such machine is used on warrants drawn on the State Treasurer, the same may be used only in accordance with such rules and regulations as may be prescribed by the State Board of Education with the approval of the State Treasurer. The use of such signature machine shall not be employed in any county or city administrative unit until the governing board thereof has adopted a resolution authorizing the use of same and accepting the full responsibility for any unauthorized or improper use of such machine. In all cases, the secretary to the county board of education and the surety on his bond, or the secretary to the city administrative unit and the surety on his bond, making use of such signature machine, shall be liable for any illegal, improper or unauthorized use of such machine.

3. Special Funds of Individual Schools.—The board of education of a county administrative

unit and the board of trustees of a city administrative unit shall, unless otherwise provided for by law, designate the bank, depository, or trust company authorized to do business in North Carolina in which all special funds of each individual school shall be deposited. Such funds shall be paid out only on checks signed by the principal of the school and the treasurer who has been selected by the respective boards; provided, this procedure for depositing and disbursing funds is not required for schools handling less than three hundred dollars (\$300.00), and if in the judgment of the boards of the respective administrative units such procedure should not be required. However, in all schools a complete record shall be kept by the treasurer and reports made of all money received and disbursed by him in handling funds of the school; provided, further, that nothing in this subsection 3 shall prevent the disbursing of all these special funds upon signatures required under the provisions of subsections 1 and 2 of this section.

4. Records and reports.—The state superintendent of public instruction and state board of education shall have full power and authority to make rules and regulations to prescribe the manner in which records shall be kept by all county and city administrative units as to the expenditure of current expense funds, capital outlay funds, and debt service funds, derived from local sources, and to prescribe for making reports thereof to the state superintendent of public instruction.

5. Cashing Vouchers and Payment of Sums Due on Death of Teachers, etc.—In the event of the death of any superintendent, teacher or principal or other school employee before cashing any voucher which has been issued for services rendered or to whom a payment is due for services rendered in any amount not in excess of five hundred dollars (\$500.00), when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will be authorized to pay out such sums in the following manner: 1. For satisfaction of widow's year's allowance, if such is claimed. 2. For funeral expenses and medical and doctors' bills for the last illness of the deceased, and any taxes due the state or local government. If any surplus remains, the clerk of the superior court shall appoint an administrator and pay the surplus to the administrator. The clerk shall receive no commission for making such payment to the administrator, and the administrator shall receive no commission for receiving such surplus from the clerk. (1939, c. 358, s. 20; 1941, c. 267, s. 8; 1943, c. 721, s. 8; 1949, c. 1033, s. 1; c. 1082, s. 3; 1951, c. 380, s. 2; c. 1163, s. 1.)

Editor's Note.—The first 1949 amendment added subsection 5. The second 1949 amendment inserted present subsection 3 and renumbered old subsection 3 as 4. The first 1951 amendment deleted the words "and the balance, if any, as provided by law for the distribution of decedent's estates", formerly appearing at the end of subsection 5, and substituted therefor the present last two sentences of the subsection. The second 1951 amendment inserted the second paragraph of subsection 2. As the rest of the section was not affected by the amendments it is not set out.

§ 115-369. Audit of school funds.—All school funds shall be audited and reports made for each school year.

1. **State School Funds.**—The state board of education, in cooperation with the state auditor, shall cause to be made an annual audit of the state school funds disbursed by county and city administrative units and such additional audits as may be deemed necessary.

2. **County and City Administrative Unit and District School Funds.**—The county board of education and the board of trustees of city administrative units, respectively, in cooperation with the State board of education, shall cause to be made an annual audit of all county, city, and district school funds, and the school boards shall provide for the payment of the cost thereof in the school budgets of the respective administrative units.

The annual audits shall be completed as near to the close of the year as practicable and copies of said audit shall be filed with the chairman and the secretary of the school governing body of the school administrative unit, the county auditor, the State Board of Education, the director of the local government commission, and the State Superintendent of Public Instruction not later than October 1st after the close of the fiscal year on June 30th. By October 1st after the close of the school year, a condensed statement of the report on the audit shall be published in some newspaper published in the county, or posted at the courthouse door if no newspaper is published in such county.

3. **Special Funds of Individual Schools.**—The county board of education and the board of trustees of city administrative units, respectively, shall cause to be made, at the time the audit of the county or city funds is made, an audit of the special school funds of each school in the respective administrative units. Such annual audits shall be completed as near to the close of the year as practicable and copies of said audit filed with the chairman and the secretary of the administrative unit in which the school is located and the State Board of Education not later than October 1st after the close of the fiscal year on June 30th.

4. **Payment of Audit Costs.**—The county board of education in a county administrative unit and the board of trustees in a city administrative unit shall include in the school budgets of the respective administrative units funds for the payment of the costs of the audits of county, city, district, and special funds of individual schools as required under subsections 2 and 3 of this section; provided, that nothing in this section shall prevent the respective boards from prorating the cost of auditing of special funds to the special funds of each school. (1939, c. 358, s. 21; 1943, c. 721, s. 8; 1949, c. 1082, s. 4; 1951, c. 1027, s. 6.)

Editor's Note.—The 1949 and 1951 amendments rewrote this section.

§ 115-370. Workmen's compensation and sick leave.—The provisions of the Workmen's Compensation Act shall be applicable to all school employees, and the state board of education shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as are applicable to such employees as are paid from state school funds. Liability of

the state for compensation shall be confined to school employees paid by the state from state school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the state operated nine months school term. The state shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workmen's Compensation Act whether all of said compensation for the nine months school term is paid from state funds or in part supplemented by local funds. The state shall also be liable for workmen's compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by state and federal funds, which liability shall cover the entire period of service of such employees. The county and city administrative units shall be liable for workmen's compensation for school employees whose salaries or wages are paid by such local units from local funds. Such local funds are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The state board of education is hereby authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not exceeding five days and to promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall not be less than three dollars per day. The state board of education may provide to each administrative unit not exceeding one per cent (1%) of the cost of instructional service for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the state board of education, not exceeding the provisions made for other state employees.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm or corporation shall not be liable for the payment of any sum of money under this subchapter.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from state and federal vocational funds, while in attendance upon community, county and state meetings, called for specific purpose of promoting the agricultural interest of North Carolina, when such attendance is approved by the county superintendents of public instruction or the state director of vocational education. (1939, c. 358, s. 22; 1943, c. 255, s. 2; 1943, c. 720, s. 3; 1943, c. 721, s. 8; 1945, c. 970, ss. 10, 11; 1947, c. 1077, s. 1; 1949, c. 1116, s. 5.)

Editor's Note.—

The 1945 amendment inserted the fourth sentence of the first paragraph and added the last paragraph.

The 1947 amendment struck out a portion of the fifth sentence to make it conform to the fourth sentence.

The 1949 amendment added the third sentence of the second paragraph.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 361.

Cited in *Hunter v. Board of Trustees*, 224 N. C. 359, 30 S. E. (2d) 384 (con. op.).

§ 115-371. Age requirement and time of enroll-

ment.—Children to be entitled to enrollment in the public schools for the school year one thousand nine hundred thirty-nine-forty, and each year thereafter, must be six years of age on or before October first of the year in which they enroll, and must enroll during the first month of the school year. The principal of any public school shall have the authority to require the parents of any child presented for admission for the first time to such school to furnish a certified copy of the birth certificate of such child which shall be furnished upon request by the register of deeds of the county having on file the record of the birth of such child without charge or other satisfactory evidence of date of birth. (1939, c. 358, s. 22½; 1949, c. 1033, s. 1.)

Editor's Note.—The 1949 amendment added the second sentence.

§ 115-372. Purchase of equipment and supplies.—It shall be the duty of the county boards of education and/or the governing bodies of city administrative units to purchase all supplies, equipment and materials in accordance with contracts and/or with the approval of the state division of purchase and contracts. Title to instruction supplies, office supplies, fuel, and janitorial supplies, enumerated under subsections one, two, and three of § 115-365, purchased out of state funds, shall be taken in the name of the county board of education and/or city board of trustees, which shall be responsible for the custody and replacement. Title to all buses, bus maintenance equipment, and materials and supplies used in the maintenance and operation of the school transportation system, enumerated in subsection four of § 115-356, purchased out of state funds, shall be taken in the name of the state board of education and held by the county board of education for the use and benefit and subject to the direction of the state board of education: Provided, that no contracts shall be made by any county or city administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the state purchase contracts, it is hereby made the mandatory duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase. (1939, c. 358, s. 23; 1945, c. 970, s. 12.)

Local Modification.—City of Greensboro: 1951, c. 707, s. 5.
Editor's Note.—The 1945 amendment inserted that part of the section between the first sentence and the proviso.

§ 115-374. School transportation; use of school busses by state guard or national guard.—The control and management of all facilities for the transportation of public school children shall be vested in the state of North Carolina under the direction and supervision of the state board of education, which shall have authority to promulgate rules and regulations governing the organization, maintenance, and operation of the school transportation facilities. The tax levying authorities in the various counties of the state are authorized and empowered to provide in the capital outlay budget adequate buildings and equipment for the storage and maintenance of all school busses. Provision shall be made for adequate inspection each thirty days of each vehicle used in the transportation of school children, and a record of such inspection

shall be filed in the office of the superintendent of the administrative unit. It shall be the duty of the administrative officer of each administrative unit to require an adequate inspection of each bus at least once each thirty days, the report or reports of which inspection shall be filed with the administrative officers. Every principal, upon being advised of any defect by the bus driver, shall cause a report of such defect to be made to this administrative officer immediately, whose duty it shall be to cause such defect to be remedied before such bus can be further operated. The use of school busses shall be limited to the transportation of children to and from school for the regularly organized school day and to the transportation of accredited teachers in the public school system on active duty while going to and from school in the discharge of their duties for the regularly organized school day: Provided, that no routing or schedule of school busses shall be arranged or altered to accommodate any such teacher, no teacher shall displace any pupil in the seating arrangements on such bus, and no teacher shall have or exercise any official duty or responsibility while so riding on any such bus, and the bus driver shall retain all legal authority and responsibility granted or imposed on such driver; provided further, that any teacher availing himself or herself of such transportation shall be deemed to have assumed all risks incident thereto, and the state of North Carolina shall not be held in any way responsible or liable for any injury or damage resulting from the transportation of any such teacher; provided further, in cases of sudden illness or injury requiring immediate medical attention of any child or children while attending the public schools, the principal of the school may send the child or children by school bus, if no other vehicle is available, to the nearest doctor or hospital for medical treatment; provided the expense of such transportation shall be paid from county funds.

The state board of education is authorized and empowered, under rules and regulations to be adopted by said state board of education, to permit the use and operation of school busses for the transportation of school children on necessary field trips while pursuing the courses of vocational agriculture, home economics, trade and industrial vocational subjects, to and from demonstration projects carried on in connection therewith; provided that under no circumstances shall the total round trip mileage for any one trip exceed twenty-five miles nor on any such trip shall a state owned school bus be taken out of the state of North Carolina. The state board of education is authorized and empowered, under rules and regulations to be adopted by said board, to permit the use and operation of school busses for transportation of school children and school employees within the boundaries of any county or health district to attend state planned group educational or health activities, specifically excluding athletic or recreational activities, which educational or health activities in the judgment of the state board of education are directly connected with the public school program as administered within the counties of the state, and which are conducted under the auspices or with the sanction of the state board of education. The costs of operating such school busses for said purpose, including the liability for workmen's

compensation therewith and the employment of drivers of such busses, shall be paid for out of State funds, and the drivers of such busses shall be selected and employed as is provided for the operation of busses for the regularly organized school day under § 115-378: Provided, further, that the state board of education shall approve and designate any busses used for the purposes herein set forth.

(1947, c. 283; 1949, c. 101.)

Local Modification.—Guilford: 1947, c. 345.

Editor's Note.—

The 1947 amendment inserted the second sentence of the second paragraph. The 1949 amendment inserted in the first paragraph the provisions relating to the transportation of teachers. As the third paragraph was not affected by the amendments it is not set out.

§ 115-376. Bus routes.—For all public schools to which transportation is now or may hereafter be provided, the State Board of Education in co-operation with the county superintendent of schools, the district school committee, and the district school principal shall establish the route to be followed by each school bus operated as a part of the State public school transportation system. Unless road or other conditions make it inadvisable, school busses shall be routed on State maintained highways so as to get within one mile of all children who live a greater distance than one and one-half miles from the school to which they are assigned. Bus routes shall be established with a view to the needs of the students to the end that the necessity of students waiting on the road for busses in inclement weather be eliminated. All school bus routes thus established shall be filed with the county board of education prior to the opening of schools, and all changes made therein during the school year shall be filed within 10 days with the county board of education. In case any bus route so established is unacceptable to the district school committee, such committee may appeal to the county board of education. In the event any of said routes are disapproved by the county board of education, and on notice to the State Board of Education, the staff of said board shall restudy the protested routing to the end that a prompt and satisfactory solution to the problem may be found. If the solution is not satisfactory to the county board of education, said board may file notice with the State Board of Education, and a hearing on such appeal shall be had by the State Board of Education within 30 days.

The State shall not be required to provide transportation for children living within one and one-half miles of the school in which provision for their instruction has been made.

School children shall not be transported except to the school to which said child is assigned by the county board of education or the State Board of Education under the provisions of G. S. 115-352.

Where road, geographic, or other conditions make it inadvisable to offer transportation to any school child entitled to attend the school of any particular district, the State Board of Education

is authorized to approve the assignment of such child to such other school as the Board may approve. In lieu of transportation, the State Board of Education may provide for the payment monthly to the parent or guardian of such child a sum not to exceed \$10.00 per month for each school month that such child may attend school outside the district of residence. (1939, c. 358, s. 25; 1941, c. 267, s. 10½; 1943, c. 721, s. 8; 1945, c. 970, s. 15; 1947, c. 1077, ss. 4, 8; 1951, c. 1079, s. 1.)

Editor's Note.—

The 1951 amendment rewrote this section.

§ 115-377. Purchase of new equipment; heating facilities in busses.

The state board of education shall provide that all school busses which may hereafter be placed in operation be equipped with adequate heating facilities. (1939, c. 358, s. 26; 1941, c. 267, ss. 8½, 10; 1943, c. 721, s. 8; 1947, c. 925.)

Editor's Note.—

The 1947 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

§ 115-378. Bus drivers.

Local Modification.—Craven: 1945, c. 833; Currituck: 1947, c. 372.

§ 115-378.1. Monitors to preserve order in school busses.—The superintendent or principal of every public school to which students are brought by school bus or school busses may appoint a monitor for each bus.

It shall be the duty of the monitors so appointed to keep order and do other things necessary for the safe transportation of children in public school busses in North Carolina, under rules and regulations established by the county boards of education or the principal of the school where the bus is operated. (1945, c. 670.)

§ 115-381. Lunch rooms may be provided.

All lunch rooms and cafeterias operated under the provisions of this section shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation shall be used for the purpose of reducing the cost of meals served therein, and for no other purpose. (1939, c. 358, s. 30; 1945, c. 970, s. 9.)

Editor's Note.—The 1945 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

As to revolving fund for counties receiving federal aid for school lunches, see § 115-25.1.

SUBCHAPTER XXIII. NORTH CAROLINA STATE THRIFT SOCIETY.

Art. 51. North Carolina State Thrift Society.

§ 115-392. Investments.—The funds of the society may, at the discretion of the board, be invested in obligations of the United States Government, or of the State of North Carolina, or deposited as previously provided in § 115-390. (1933, c. 385, s. 11; 1935, c. 489, s. 4.)

Editor's Note.—

This section is set out in full to correct a typographical error appearing in original.

Chapter 116. Educational Institutions of the State.

Art. 1. The University of North Carolina.

Part 1. General Provisions.

Sec.

116-3.1. School of dentistry.

116-23.1. Unclaimed funds held or owing by life insurance companies.

Part 4. Miscellaneous Provisions.

116-44.1. Motor vehicle laws applicable to streets, alleys and driveways on campuses of the University of North Carolina; University trustees authorized to adopt traffic regulations.

Art. 5. Pembroke State College.

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Art. 8. North Carolina College at Durham.

116-99. Trustees of the North Carolina College at Durham.

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116-142.1. Creation; powers.

116-142.2. School controlled by North Carolina hospitals board of control.

116-142.3. Acquisition of real estate, erection of buildings, etc.

116-142.4. Temporary quarters.

116-142.5. Authority and powers of board; classification of inmates.

116-142.6. Superintendent.

116-142.7. Aims of school; application for admission.

116-142.8. Regulation of admission; financial ability of parent or guardian.

116-142.9. Discharge of inmate.

116-142.10. Offenses relating to inmates.

Art. 15. Educational Advantages for Children of World War Veterans.

116-145 to 116-148.1. [Repealed.]

116-149. Definitions.

116-150. Scholarships.

116-151. Classes of eligible children entitled to scholarships.

116-152. Institution reimbursed for free room rent and board.

Art. 1. The University of North Carolina.

Part 1. General Provisions.

§ 116-3.1. School of dentistry.—In order to carry forward the medical care program for all the people of North Carolina, the board of trustees of the University of North Carolina is hereby authorized, empowered and directed to establish and maintain, in conjunction with the medical school of the University of North Carolina, a school for the teaching of dentistry. (1949, c. 503.)

§ 116-20. Escheats to university.—All real estate which has heretofore accrued to the state, or shall hereafter accrue from escheats, shall be vested in the University of North Carolina, and shall be appropriated to the use of that corporation. Title to any such real property which has escheated to the University of North Carolina, shall be con-

veyed by deed in the manner now provided by § 143-146 to and including § 143-150 of the General Statutes of North Carolina: Provided, that in any action in the superior court of North Carolina wherein the University of North Carolina is a party, and wherein said court enters a judgment of escheat in behalf of the University of North Carolina for any real property, then, upon petition of the University of North Carolina in said action, said court shall have the authority to appoint the escheat officer of the University of North Carolina as a commissioner for the purpose of selling said real property at a public sale, for cash, at the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said commissioner, when appointed by the court, shall have the right to convey a valid title to the purchaser of the property at public sale, but only after said sale shall have first been confirmed and approved by the comptroller of the University of North Carolina. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the escheat fund of the University of North Carolina. (Rev., s. 4282; Const., art. 9, s. 7; Code, s. 2626; R. C., c. 113, s. 11; 1789, c. 306, s. 2; 1947, c. 494; C. S. 5784.)

Editor's Note.—The 1947 amendment added all of this section beginning with the second sentence.

For a brief discussion of the 1947 amendment to this article, and other provisions of the 1947 Acts relating to escheats, see 25 N. C. Law Rev. 421.

Right Conferred by Constitution.—The right of succession by escheat to all property, when there is no wife or husband or parties to inherit or take under the statutes of descent and distribution, has been conferred upon the University of North Carolina by the state constitution, Art. IX, sec. 7, and extended by this and the following five sections. Board of Education v. Johnston, 224 N. C. 86, 29 S. E. (2d) 126.

§ 116-21. Evidence making prima facie case.

Cross Reference.—See annotations under § 116-20.

§ 116-22. Unclaimed personalty on settlements of decedents' estates to university.—All sums of money or other estate of whatever kind which shall remain in the hands of any executor, administrator, or collector for five years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall be paid by the executor, administrator, or collector to the University of North Carolina; and that corporation is authorized to demand, sue for, recover, and collect such moneys or other estate of whatever kind, and hold the same without liability for profit or interest, until a just claim therefor shall be preferred by creditors, next of kin, or others entitled thereto. (Rev., s. 4283; Const., art. 9, s. 7; Code, ss. 2627, 1504; 1868-9, c. 113, s. 76; R. S., c. 46, s. 20; 1784, c. 205, s. 2; 1809, c. 763, s. 1; 1947, c. 614, s. 2; C. S. 5785.)

Cross Reference.—See annotations under § 116-20.

Editor's Note.—The 1947 amendment struck out the words "and if no such claim shall be preferred within ten years after such money or other estate be received by such corporation, then the same shall be held by it absolutely," which formerly appeared at the end of this section.

§ 116-23. Other unclaimed personalty to university.—Personal property of every kind, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums

of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for five years after the same shall become due and payable, shall be deemed derelict property, and shall be paid to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. (Rev., s. 4284; Code, ss. 2628, 2629; 1947, c. 614, s. 2; C. S. 5786.)

Local Modification.—Forsyth: 1945, c. 1049, s. 4.

Cross Reference.—See annotations under § 116-20.

Editor's Note.—The 1947 amendment struck out the words "and if no such claim shall be preferred within ten years after such property or dividend shall be received by it, then the same shall be held by it absolutely" formerly appearing at the end of this section.

§ 116-23.1. Unclaimed funds held or owing by life insurance companies.—(1) Definitions.—The term "unclaimed funds" as used in this section shall mean and include all monies held and owing by any life insurance company doing business in this state which shall have remained unclaimed and unpaid for seven years or more after such monies became due and payable under any life or endowment insurance policy. A life insurance policy not matured by the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be "due and payable" within the meaning of this section when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Monies shall be deemed to be "due and payable" within the meaning of this section although the policy shall not have been surrendered nor proofs of death submitted as required and although the claim as to the payee is barred by a statute of limitations.

(1½) Scope.—This section shall apply to all unclaimed funds, as herein defined, held and owing by any life insurance company doing business in this state where the last known address, according to the records of such company, of the person entitled to such funds is within this state, provided that if a person other than the insured be entitled to such funds and no address of such person be known to such company or if it be not definite and certain from the records of such company what person is entitled to such funds, then in either event it shall be presumed for the purposes of this section that the last known address of the person entitled to such funds is the same as the last known address of the insured according to the records of such company.

(2) Reports.—Every such life insurance company shall on or before the first day of May of each year make a report in writing to the commissioner of insurance of all unclaimed funds, as hereinbefore defined, held or owing by it on the thirty-first day of December next preceding. Such report shall be signed and sworn to by an officer of such company and shall set forth (1) in alphabetical order the full name of the insured, his last known address according to the company's records, and the policy number; (2) the amount appearing from the company's records to be due on such policy; (3) the date such unclaimed funds became payable; (4) the name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds; and (5) such

other identifying information as the commissioner of insurance may require.

(3) Notice; Publication.—On or before the first day of September following the making of such reports under this section, the commissioner of insurance shall cause to be published notices entitled: "Notice of Certain Unclaimed Funds Held or Owing by Life Insurance Companies." Each such notice shall be published once a week for two successive weeks in a newspaper published in the county of this state in which is located such last known address of each such insured, or other person who, according to the company's records may have an interest in such unclaimed fund, or if no newspapers are published in such county, then by posting such notice at the court house door of said county.

The notice shall set forth in alphabetical order the names contained in such reports of each insured whose last known address is within the county of publication together with (1) the amount reported due and the date it became payable, (2) the name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and (3) the name and address of the company. The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1st their right to receive the same, and that not later than December 1st such unclaimed funds still remaining will be paid to the University of North Carolina which shall thereafter be liable for the payment thereof.

It shall not be obligatory upon the commissioner of insurance to publish any item of less than fifty dollars in such notice, unless the commissioner of insurance deems such publication to be in the public interest. The expenses of publication shall be charged against the University of North Carolina.

(4) Payment to University of North Carolina.—All unclaimed funds contained in the report required to be filed under this section, excepting those which have ceased to be unclaimed funds since the date of such report, shall be paid over to the University of North Carolina on or before the following December 1st.

The commissioner of insurance shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurance company shall file any report and in such event the time for publication and payment required by this section shall be extended for a like period.

(5) Custody of Unclaimed Funds; Insurers Exonerated.—Upon the payment of such unclaimed funds to the University of North Carolina, the state shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of such unclaimed funds, and the life insurance company making such payment shall immediately and thereafter be relieved of and held harmless by the state from any and all liability for any claim or claims which exist at such time with reference to such unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

(6) Reimbursement for Claims Paid by In-

surers.—Any life insurance company which has paid to the University of North Carolina monies deemed unclaimed funds pursuant to the provisions of this section may make payment to any person appearing to such company to be entitled thereto, and upon proof of such payment the state of North Carolina shall forthwith reimburse such company to the extent of the full amount, without interest, paid the University of North Carolina for the account of such claimant.

(7) Determination and Review of Claims.—Any person entitled to unclaimed funds paid to the University of North Carolina may file a claim at any time with the commissioner of insurance. The commissioner of insurance shall possess full and complete authority to accept or reject any such claim. If he rejects such claim or fails to act thereon within ninety days after receipt of such claim, the claimant may make application to the superior court of Wake county, upon not less than thirty days' notice to the commissioner of insurance, for an order to show cause why he should not accept and order paid such claim.

(8) Payment of Allowed Claims.—Any claim which is accepted by the commissioner of insurance or ordered to be paid by a court of competent jurisdiction shall be paid by the University of North Carolina.

(9) Records Required.—The University of North Carolina shall keep a public record of each payment of unclaimed funds received from any life insurance company. Such record shall show in alphabetical order the name and last known address of each insured, and of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and with respect to each policy, its number, the name of the company, and the amount due.

(10) Payments to Other States; Pending Litigation.—This section shall not apply to or affect any unclaimed funds (a) which have been paid to another state or jurisdiction prior to the effective date hereof, or (b) which are at the effective date hereof involved in litigation with reference to the custody, appropriation or escheat of such funds. (1949, c. 682.)

§ 116-24. Certain unclaimed bank deposits to university.—All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the University of North Carolina and held by it, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto. The receipt of the University of North Carolina of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. Upon receipt of such funds, the University of North Carolina shall cause to be posted and keep posted for thirty days at the courthouse door of the county in which such bank is located, a notice giving the names of the persons in whose name or names such deposits were made in said bank, the amount thereof, and the last known address of such person, and the

bank paying over said funds to the University of North Carolina shall furnish such information to be used in giving said notice. If any person at any time thereafter shall appear and show that he is the identical person to whom such funds are due, the University of North Carolina shall pay the same in full to such person, but without any liability for interest or profits thereon. Debits of service charges and debits of intangible taxes made by banks shall not be considered debits within the meaning of this section. A bank shall be deemed to be unable to locate a depositor or owner when the present address of the depositor or owner is unknown to the bank, and United States mail addressed to the depositor or owner at the last known address, with a return address of the sending bank on the envelope, is returned undelivered to the bank mailing the same. (1937, c. 400; 1939, c. 29; 1947, c. 614, s. 3; 1949, c. 1069.)

Cross Reference.—See annotations under § 116-20.

Editor's Note.—The 1947 amendment added the third and fourth sentences. It also struck out the following phrase formerly appearing at the end of the first sentence of the section: "and if no such claim shall be preferred within ten years after such deposit shall be received by it, then the same shall be held by it absolutely."

The 1949 amendment added the last two sentences. For comment on the amendment, see 27 N. C. Law Rev. 427.

§ 116-25. Other escheats.—Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporation engaged in construction work in North Carolina for services rendered in such construction work within the state are hereby declared to be escheats coming within the laws of this state, and the same shall be paid to the University of North Carolina immediately upon the expiration of one year from the time the same became due.

Rebates and returns of overcharges due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the utilities commission, shall be paid to the University of North Carolina.

All monies in the hands of clerks of the superior court, the state treasurer, or any other officer or agency of the state or county, or any other depository whatsoever, as proceeds of the liquidation of state banks by receivers appointed in the superior court prior to the liquidation Act of one thousand nine hundred twenty-seven, shall be immediately turned over into the custody of the University of North Carolina: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

All monies in the hands of the treasurer of the state, represented by state warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years, shall be turned over to the University of North Carolina.

All monies, claims, or other property coming into the possession of the University of North Carolina under this section shall be deemed derelict property and shall be held by it without lia-

bility for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto.

Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund.

Any funds derived from the liquidation of any national bank organized and operated in this state, which has heretofore or which shall hereafter become insolvent, when such insolvent bank has been fully liquidated by a receiver appointed by the comptroller of the currency as provided by Title 12 of United States Code Annotated, sections 191 and 192, or any other federal law, or has been liquidated by any agent appointed as provided by Title 12 of United States Code Annotated, section 197, which shall remain under the control of the comptroller of the currency and deposited with the treasurer of the United States, or deposited elsewhere, as authorized by law, which shall be due any depositor or stockholder of this state, which for a period of ten years after becoming due such depositor or stockholder or available for distribution to any stockholder in the liquidation of such insolvent bank, has not been paid over to such depositor or stockholder, or the legal representative of such depositor or stockholder, due to inability to locate and deliver the same to the person entitled thereto, shall be deemed derelict property and shall be paid over to the University of North Carolina by the comptroller of the currency, or by such agent as may have the funds in charge, to be held in protective custody by the University of North Carolina until a just claim shall be made for same by the owner thereof. Upon payment of such funds to the University of North Carolina, the comptroller of the currency, or any agent having such funds in charge, shall be relieved of all further liability therefor.

Upon receipt of such funds the University of North Carolina shall cause to be posted, and keep posted for thirty days, at the courthouse door of the county in which such insolvent national bank did business, a notice giving the names of the persons to whom such amounts so paid over were due, the amount thereof and the last known address of such person, and the source from which such funds were received: Provided, the comptroller of the currency or liquidating agent of such insolvent national bank shall furnish such information to the University of North Carolina when such funds are so paid over to it. If any person at any time thereafter shall appear and show that he is the identical person to whom any part of such fund is due, the University of North Carolina shall pay such part in full to such person, but without any liability for interest or profits thereon. (1939, c. 22; 1947, c. 614, s. 1; c. 621, s. 2.)

Editor's Note.—The 1947 amendment struck out the word "now" in the first line of the third and fourth paragraphs, and struck out the former last clause of the fifth paragraph dealing with the preferring of claims within ten years. The amendment also added the last two paragraphs to the section.

§ 116-26. Application of receipts.—All receipts heretofore had or hereafter to be had from escheated property or derelict property, and all interest and earnings thereon, shall be set apart by the trustees of the University so that the interest and earnings from said fund shall be used

for maintenance and/or for scholarships and loan funds to worthy and needy students, residents of this state, attending the University of North Carolina, under such rules and regulations as shall be adopted by the board of trustees of the University with regard thereto. (Rev., s. 4285; Code, s. 2630; 1874-5, c. 236, s. 2; 1947, c. 614, s. 4; C. S. 5787.)

Editor's Note.—The 1947 amendment rewrote this section.

Part 4. Miscellaneous Provisions.

§ 116-44.1. Motor vehicle laws applicable to streets, alleys and driveways on campuses of the University of North Carolina; University trustees authorized to adopt traffic regulations.—(a) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the state and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campuses of the University of North Carolina. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campuses of the University of North Carolina as is now vested by law in the trustees of the University of North Carolina.

(b) The board of trustees of the University of North Carolina is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campuses not inconsistent with the provisions of Chapter 20, General Statutes of North Carolina, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the secretary of state of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars (\$50.00) or imprisonment for not exceeding 30 days.

(c) The board of trustees of the University of North Carolina shall cause to be posted at appropriate places on the campuses of the University notice to the public of applicable speed limits and parking laws and ordinances. (1947, c. 1070.)

Art. 2. Western Carolina Teachers' College.

§ 116-46. Trustees; appointment; terms; to hold property.—From and after the first Monday in May, 1953, the board of trustees of Western Carolina Teachers' College shall consist of twelve persons to be appointed by the Governor, three of whom shall be appointed for a term of two years, three for a term of four years, three for a term of six years and three for a term of eight years, the terms of all said trustees to begin on the first Monday in May, 1953, upon the expiration of the terms of the present board of trustees who shall continue to serve until that time. Thereafter, the successors to the members of the board of trustees shall be appointed by the Governor at the expiration of each term for

terms of eight years. All of said trustees shall serve until their successors are duly appointed and qualified. Any vacancies occurring in the board shall be filled by the Governor for the unexpired term of the member who causes such vacancy. The Governor shall transmit the names of his appointees to the Senate at the next session of the General Assembly for confirmation. The said board is hereby created a body corporate, to be known as "the board of trustees of Western Carolina Teachers' College." All property, real, personal, or mixed, of every kind and character, now owned and under the control of the board of trustees of the Cullowhee Normal and Industrial School at Cullowhee, or owned and under the control of the State Board of Education or of any other person or corporation for the use and benefit of the Cullowhee Normal and Industrial School, is hereby transferred to and the title thereof is hereby vested in the board of trustees of the Western Carolina Teachers' College who shall take, receive and hold the same for the use and benefit of the Western Carolina Teachers' College; the trustees may purchase and hold real and personal property; receive donations, which donations shall be received by them for the purposes expressed by the donors thereof and shall be used for such purpose and no other, and do all other things necessary, proper and useful to carry out the provisions of this article. All property now owned by the Cullowhee Milling Company, a corporation, the stock of which is owned by the trustees, shall be transferred to the board of trustees of the Western Carolina Teachers' College and the said corporation shall be dissolved according to law. The trustees shall take over the property of the Cullowhee Milling Company and use it for the benefit of the Western Carolina Teachers' College as fully as if it was now owned by the Cullowhee Normal and Industrial School and not by the Cullowhee Milling Company. (1925, c. 270, s. 2; 1929, c. 251, s. 2; 1951, c. 1167, s. 1.)

Editor's Note.—The 1951 amendment inserted the first four sentences of this section in lieu of the former first five sentences.

Art. 3. East Carolina College.

§ 116-56. Incorporation and corporate powers.—The trustees of the East Carolina College, established by an act of the general assembly of North Carolina of one thousand nine hundred and seven, and located at Greenville, North Carolina, shall be and are hereby constituted a body corporate by and under the name and style of "The Board of Trustees of the East Carolina College," and by that name may sue and be sued, make contracts, acquire real and personal property by gift, purchase, or devise, and exercise such other rights and privileges incident to corporations of like character as are necessary for the proper administration of said college. (1907, c. 820, ss. 11, 12, 16; 1911, c. 159, s. 1; Ex. Sess. 1921, c. 27, s. 1; 1951, c. 641, s. 2; C. S. 5863.)

Editor's Note.—

The 1951 amendment substituted East Carolina College for East Carolina Teachers' College.

Session Laws 1951, c. 641, s. 1, provides: "The name of the East Carolina Teachers' College is hereby changed to East Carolina College."

Session Laws 1951, c. 641, s. 3, provides: "All appropriations made by the General Assembly to the East Carolina Teachers' College shall be deemed to be for the East Carolina College and all other laws referring to the East Carolina Teachers' College shall be considered as having reference to East Carolina College, as set forth in this act."

§ 116-59. Board of Trustees.—The board of trustees of the East Carolina College shall consist of 12 members, who shall be appointed by the Governor and confirmed by the Senate; in addition to this number, the superintendent of Public Instruction shall be ex officio chairman. (1951, c. 641, s. 2.)

Editor's Note.—

The 1951 amendment substituted, in the first paragraph, East Carolina College for East Carolina Teachers' College. As the rest of the section was not affected by the amendment it is not set out.

Art. 4. Appalachian State Teachers' College.

§ 116-76.1. Trustees of endowment fund; gifts; investments and use of income.

(4) It shall be the duty of the trustees of the endowment fund to invest, sell, and/or reinvest any funds coming into their hands at any time and in such manner as, in their judgment, they may deem just, proper, and advantageous to the fund.

(1951, c. 1157, s. 1.)

Editor's Note.—The 1951 amendment rewrote subsection (4). As only subsection (4) was affected by the amendment, the rest of the section is not set out.

Art. 5. Pembroke State College.

§ 116-79. Incorporation and corporate powers; location.—The Pembroke State College shall be and remain a state institution for educational purposes, at Pembroke, North Carolina, in the county of Robeson, under the name and style aforesaid, and by that name may have perpetual succession, sue and be sued, contract and be contracted with, have and hold school property, including buildings, lands and all appurtenances thereto, situated as aforesaid; acquire by purchase or condemnation, under the general laws pertaining to eminent domain, donation or otherwise, real property for the purpose of maintaining and enlarging the said college, which shall be and remain for the purpose of the education of the Cherokee Indians of Robeson county; acquire by purchase, donation, or otherwise, personal property for the purpose of said college. (Rev., s. 4236; 1887, c. 400, ss. 1, 6; 1911, cc. 168, ss. 1, 2, 215, s. 4; 1913, c. 123, ss. 4, 6; 1941, c. 323, s. 1; 1945, c. 817, s. 1; 1949, c. 58, s. 2; C. S. 5843.)

Editor's Note.—

The 1945 amendment inserted the words "at Pembroke, North Carolina" and rewrote the latter part of the section.

Session Laws 1949, c. 58, s. 1, changed the name of the Pembroke State College for Indians to "Pembroke State College." And section 2 of said chapter amended this article accordingly.

§ 116-80. Supervision by State Board of Education.—The State Board of Education shall make all needful rules and regulations concerning the expenditure of funds, the selection of president, teachers and employees of said Pembroke State College. The State Board of Education shall control and supervise said school to the same extent substantially as that provided for the organization, control and supervision of the white normal and training schools; and it may change the

organization to suit conditions in so far as the needs of the school and the funds appropriated demand such change. (1931, c. 276, s. 3; 1941, c. 323, s. 2; 1949, c. 58, s. 2.)

§ 116-81. Trustees.—The governor shall appoint eleven trustees for the Pembroke State College. The terms of office of nine of such trustees shall begin on April 1, 1937, and the terms of office of the remaining two shall begin on April 1, 1939. The terms of office of all trustees shall be four years and until the successors of such trustees are appointed and qualified. The trustees shall be such as the governor shall determine, after such inquiry and consideration as he may desire to make, to be fit, competent and proper for the discharge of all the duties that shall devolve upon them as such trustees. The governor shall fill all vacancies. The governor shall transmit to the senate at the next session of the general assembly following their appointment the names of persons appointed by him for confirmation.

The governor shall have the power to remove any member of the board of trustees provided for in this section whenever in his opinion it is to the best interest of the state to remove such person, and the governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9, 13, 14; 1929, c. 238; 1931, c. 275; 1941, c. 323; 1949, c. 58, s. 2.)

§ 116-82. Chairman, election, duties and powers.—The trustees shall elect one of their own number chairman and such chairman shall have the duties and the powers that devolve upon the president of corporations in similar cases, or such as shall be defined by the trustees. (Rev., s. 4237; 1887, c. 400, s. 2; 1911, c. 168, s. 2; 1945, c. 817, s. 2; C. S. 5845.)

Editor's Note.—The 1945 amendment rewrote this section.

§ 116-83. Trustees to employ and discharge teachers and manage school.—The board of trustees of said Pembroke State College shall have the power to employ and discharge teachers, to prevent negroes from attending said school, and to exercise the usual functions of control and management of said school, their action being subject to the approval of the state board of education. (1911, c. 168, s. 3; 1941, c. 323, s. 1; 1949, c. 58, s. 2; C. S. 5846.)

§ 116-84. Department for teaching of deaf, dumb and blind.—The board of trustees of the Pembroke State College are hereby authorized, empowered and directed to employ some person trained in the teaching of the deaf and dumb or blind and to provide a department in said school in which said deaf, dumb and/or blind Indian children of Robeson and surrounding counties may be taught, no provisions being now made for the teaching of said children, the said teacher to be employed in the same manner and under the same rules and regulations governing other teachers in the said school. (1935, c. 435; 1941, c. 323, s. 1; 1949, c. 58, s. 2.)

§ 116-85. Admission and qualification of pupils.—In order to protect and promote and preserve for the education of all persons who are now and may hereafter be entitled to admission into the

Pembroke State College, there shall be a committee composed of Indians, residents of Robeson county, as provided in chapter one hundred ninety-five, public laws of North Carolina, one thousand nine hundred and twenty-nine, and all questions affecting the race of those applying for admission into the Pembroke State College shall be referred to said committee, who shall have original and exclusive jurisdiction to hear and determine all questions affecting the race of any person, or persons, applying for admission into, or attending, the Pembroke State College, located at Pembroke, North Carolina.

An appeal shall lie from the action of said committee to the superior court of Robeson county, and such appeal shall be taken and perfected only in the following manner: A notice of appeal shall be given either at the time of the announcement of the action of the committee by parole, or at any time within fifteen (15) days from the time of the announcement of the action of the committee, by written notice, which shall state that the appellant does, in good faith, intend to appeal therefrom to the superior court of Robeson county, and said written notice must be served upon the chairman of said committee, or the secretary thereof, or upon two members of said committee. The appellant shall, also, at the time of the service of said notice, pay to the person upon whom the same is served, or to the secretary of the said committee if the notice is given by parole at the time of the announcement of the action of the committee, the sum of one dollar (\$1.00) which sum shall be paid to the secretary of the said Indian committee. The secretary of the said Indian committee shall certify thereupon the proceedings with reference to the matter appealed from as a return to the notice of appeal, and the said written notice so served, or a statement thereof, in case the same is given by parole, and the certified record of the proceedings had by the said committee, and their action thereon, shall be filed by the appellant in the office of the clerk of the superior court of Robeson county and shall be docketed on the civil issue docket of the superior court of Robeson county in all respects and under such rules and limitations as now apply to appeals from justices of the peace, to the superior court. The record certified from said committee shall state fully the contentions of those favoring the admission to the Pembroke State College and the said cause shall be tried in the superior court, as herein provided, upon the issues raised upon said contentions and shall be tried in said superior court upon the issues raised upon these stated contentions and the action of the said committee.

The said Indian committee, through its chairman or secretary, shall have the same power to subpoena witnesses and compel their attendance as provided under the law relating to references.

The said Indian committee is now composed of M. L. Lowry, Burleigh Lowry, J. B. Oxendine, William Wilkins, George Locklear, Dawley Maynor, and Wiley Thompson, and the said members of the said committee shall serve until their successors are appointed in the following manner: Whenever a vacancy on said committee shall occur by death, resignation, or otherwise, the remaining members of said committee shall appoint

a member of the Indian race, who is a resident of Robeson county, to fill such vacancy.

The qualifications for admission to the Pembroke State College, shall hereafter be as follows:

(a) Persons of the race of Cherokee Indians of Robeson county, who are descendants of those that were determined to constitute those who were within the terms and contemplation of chapter fifty-one, laws one thousand eight hundred and eighty-five, and within the census taken pursuant thereto by the county board of education of Robeson county, of either sex, resident in North Carolina, who are not under thirteen years of age.

(b) Persons who are Indians who are duly accredited members of any tribe of Indians whose Indian status is recognized and accepted by the bureau of Indian affairs in the department of the interior of the United States of America.

All such persons as may be found to be within the classification specified in subsections (a) and (b) herein, may attend the Pembroke State College located at Pembroke, North Carolina, for the education of the Indian race only, and no others shall be admitted to said college.

The said Indian committee, as heretofore constituted, and as herein provided, shall observe strictly the provisions herein set out as to racial qualifications of all persons who desire to enter Pembroke State College at Pembroke, North Carolina, which is for the education of the Indian race only; and, in case there is any matter brought to their attention, in which the racial qualifications of any person who desires to enter, or who has already entered the said Pembroke State College is brought in question, the said committee shall require all those who seek to enter themselves, or to promote the entrance of such persons in said college, to prove and to establish to the satisfaction of the said committee that such persons who desire to enter are within the qualifications herein set out and are entitled to enter the said college and, unless the said committee shall be fully satisfied that such applicants are thus qualified, they shall enter upon their minutes an order refusing such admission and if they are so satisfied as to such persons' racial qualifications, they shall enter an order admitting such persons. No order admitting an applicant shall be held or construed to be a judgment constituting *res adjudicata*, and no rights shall flow therefrom that will interfere with the reopening of such order at any time by the said committee upon its own motion, or at the instance of others.

When an appeal is entered and prosecuted in the superior court from an order denying an admission to said college by said committee, the burden of proof shall be upon the applicants to prove and to establish (a) to the full satisfaction of the presiding judge that the evidence on behalf of the applicants, if believed, fully establishes their rights to admission under the terms of this law; and (b) to the full satisfaction of the judge that the evidence offered on behalf of the applicant is credible, and if the presiding judge shall be fully satisfied of these requirements, then he shall submit the issues arising upon said appeal to the jury, and the burden of proof, shall be upon the applicants throughout the said trial to establish

to the full satisfaction of the jury that those who seek to enter the said college come within and have all the racial qualifications as set out herein, and unless the jury shall so find, they shall return a verdict against the applicants; and it shall be the duty of the presiding judge so to instruct the jury, whether requested so to do, or not. In case the presiding judge is not satisfied that the evidence on behalf of the applicants meets the requirements above set out, to the court's satisfaction, the said cause shall not be submitted to the jury, but said appeal shall be dismissed, and upon such dismissal the court shall enter a judgment denying the admission of such applicants to said college.

Whenever the said committee, or the court upon appeal, shall decide that any person, or persons are not entitled to admission into said college, then it shall not be lawful for any teacher, or any other person in authority at said college, to admit such person, or persons, to the said college.

Whenever the said committee shall decide that any person, or persons are not entitled to admission into said college, the said committee shall, in writing, at once notify the chairman of the board of trustees, or principal, or president of said college, by whatever name called, and after the receipt of such notice, such person, or persons, so denied admission shall be and remain ineligible for admission therein until said decision shall be reversed, either by the said committee or the superior court of Robeson county, or the supreme court on appeal, and shall not thereafter be admitted unless and until notice of such reversal is received.

Any reference in the laws of this state, either in public, public-local, or private acts, to other persons than those specified in subsections (a) and (b) herein, that prescribe qualifications for admission into said college, shall not be evidence in any hearing before the said Indian committee, or the superior court on appeal, and the issues in such trials, including any appeal to the supreme court, shall be and remain a question of fact, or an issue of fact solely, and the said committee and the said courts, shall determine whether the appeals for admission to said college come within the factual requirements of said subsections (a) and (b) herein, and such references in other laws pertaining to other persons, shall not be competent evidence in any of said hearings, or trials. (Rev., s. 4241; 1887, c. 400, s. 10; 1893, c. 515, s. 2; 1911, c. 215, ss. 2, 3; 1913, c. 123, s. 4; 1929, c. 195, s. 6; 1941, c. 323, s. 1; 1945, c. 817, s. 3; 1949, c. 58, s. 2; C. S. 5847.)

Editor's Note.—The 1945 amendment rewrote this section.

Art. 7. Negro Agricultural and Technical College of North Carolina.

§ 116-96. Powers of trustees.

The board of trustees is specifically authorized to direct the president of the board, for and on behalf of the Negro Agricultural and Technical College of North Carolina, to execute as principal a good and sufficient bond with sureties, securing to the federal government the safekeeping and return of all such federal property as the college may receive from the federal government for reserve officers training corps programs or for other similar purposes. (Rev., s. 4225; 1891, c. 549, s. 5; 1949, c. 130; C. S. 5830.)

Editor's Note.—The 1949 amendment added the above sentence at the end of this section. As the rest of the section was not changed it is not set out.

Art. 8. North Carolina College at Durham.

§ 116-99. Trustees of the North Carolina College at Durham.—There shall be twelve (12) trustees for the North Carolina College at Durham.

(1947, c. 189.)

Editor's Note.—The 1947 amendment substituted "North Carolina College" for "North Carolina College for Negroes" in the first sentence. As the rest of the section was not affected by the amendment it is not set out.

§ 116-100. Graduate courses for negroes; superintendent of public instruction as ex-officio member of boards of trustees.—The board of trustees of the North Carolina College at Durham is hereby authorized and empowered to establish from time to time such graduate courses in the liberal arts field as the demand may warrant, and the funds of the said North Carolina College at Durham justify. Such courses so established must be standard.

The board of trustees of the North Carolina College at Durham is authorized and empowered to establish departments of law, pharmacy and library science at the above-named institution whenever there are applicants desirous of such courses. Said board of trustees of the North Carolina College at Durham may add other professional courses from time to time as the need for the same is shown, and the funds of the state will justify.

The board of trustees of the Negro Agricultural and Technical College at Greensboro may add graduate and professional courses in agricultural and technical lines as the need for same is shown and the funds of the state will justify, and establish suitable departments therein.

In the event there are negroes resident in the state properly qualified who can certify that they have been duly admitted to any reputable graduate or professional college and said graduate or professional courses are being offered at the University of North Carolina and are not being offered at the North Carolina College at Durham, then the board of trustees of North Carolina College at Durham when said certification has been presented to them by the president and faculty of the North Carolina College at Durham, may pay tuition and other expenses for said student or students at such recognized college in such amount as may be deemed reasonably necessary to compensate said resident student for the additional expense of attending a graduate or professional school outside of North Carolina, and the budget commission may upon such presentation reimburse the North Carolina College at Durham the money so advanced. It is further provided that the student applying for such admission must furnish proof that he or she has been duly admitted to said recognized professional college. In the case of agricultural or technical subjects such students desiring graduate courses should apply to the Agricultural and Technical College at Greensboro, North Carolina. The general provisions covering students in the liberal arts field as stated in this section shall apply. In no event shall there be any duplication of courses in the two institutions.

Said boards of trustees are authorized, upon satisfactory completion of prescribed courses, to give appropriate degrees.

It is further stipulated that the superintendent of public instruction for North Carolina shall be a member ex officio of the boards of trustees of the North Carolina College at Durham and Agricultural and Technical College at Greensboro, and shall advise with the boards of trustees of said Colleges upon the courses to be offered, and the certification of students to other colleges. In case of needless duplication of graduate or professional courses in either college, the superintendent of public instruction shall be charged with the duty of reporting the same to the board of trustees of either institution, and the same shall be remedied. In case of failure to remedy the same, he shall report such failure to the budget bureau which will have the power and authority in its judgment to withhold any part of the appropriation from the institution so offending until said duplication is discontinued.

Whenever the appropriations for the purposes of this section are insufficient, the board of trustees of the North Carolina College at Durham and the board of trustees of the Agricultural and Technical College shall present the situation to the Assistant Director of the Budget and the Governor of North Carolina. The Governor and Council of State are hereby empowered to allocate from contingency and emergency fund such funds as may be necessary to carry out the purposes of the section. (1939, c. 65; 1947, c. 189; 1951, c. 1108, s. 1.)

Editor's Note.—The 1947 amendment substituted "North Carolina College at Durham" for "North Carolina College for Negroes."

The 1951 amendment inserted the words "being offered at the University of North Carolina and are" in the fifth line of the fourth paragraph, and rewrote the last paragraph.

Art. 10. State School for the Blind and the Deaf in Raleigh.

§ 116-109. Admission of pupils; how admission obtained.—The board of directors shall, on application, receive in the institution for the purpose of education, in the main department, all white blind children, and in the department for colored and colored deaf-mutes and blind children, residents of this state, not of confirmed immoral character nor imbecile, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of seven and twenty-one years: Provided, that pupils may be admitted to said institution who are not within the age limits above set forth, in cases in which the board of directors find that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution: Provided, further, that the board of directors is authorized to make expenditures out of any scholarship funds or other funds already available or appropriated sums of money for the use of out of state facilities for any student who, because of peculiar conditions of race or disability, cannot be properly educated at the school in Raleigh. (Rev., s. 4191 Code, s. 2231; 1881, c. 211, s. 5; 1917, c. 35, s. 1; 1947, c. 375; 1949, c. 507; C. S. 5876.)

Editor's Note.—The 1947 amendment rewrote this section. The 1949 amendment added the last proviso.

Art. 12. The Caswell Training School.

§ 116-129. Persons admitted; county welfare officer and judge of the juvenile court or clerk of the superior court to approve. — There shall be received into the Caswell training school, subject to such rules and regulations as the board of directors may adopt, feeble-minded and mentally defective persons of any age when in the judgment of the officer of public welfare and the board of directors of said institution it is deemed advisable. All applications for admission must be approved by the local county welfare officer and the judge of the juvenile court or the clerk of the court of the county wherein said applicant resides. (1911, c. 87, s. 3; 1915, c. 266, s. 2; 1919, c. 224, s. 2; 1923, c. 34; C. S. 5898.)

Editor's Note.—

This section is set out in full to correct a typographical error appearing in original.

Art. 13A. Negro Training School for Feeble Minded Children.

§ 116-142.1. Creation; powers.—An institution, to be known and designated as "The Negro Training School for Feeble Minded Children," is hereby created and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as herein set forth. (1945, c. 459, s. 1.)

§ 116-142.2. School controlled by North Carolina hospitals board of control.—The said institution shall be under the control of the North Carolina hospitals board of control, and whenever the words, "board," "directors" or "board of directors" are used in this article with reference to the governing board of said institution, the same shall mean the North Carolina hospitals board of control, and said board shall exercise the same powers and perform the same duties with respect to the negro training school for feeble minded children, as it exercises and performs with respect to the other institutions under its control, except as may in this article be otherwise provided. (1945, c. 459, s. 2.)

§ 116-142.3. Acquisition of real estate, erection of buildings, etc.—The board of directors, with the approval of the governor and the council of state, is authorized to secure by gift or purchase suitable real estate within the state at such place as the board may deem best for the purpose, and to erect or improve buildings thereon, for carrying out the purposes of the institution; but no real estate shall be purchased or any commitments made for the erection or permanent improvements of any buildings involving the use of state funds unless and until an appropriation for permanent improvements of the institution is expressly authorized by the general assembly; but this prohibition shall not prevent the directors from purchasing or improving real estate from funds that may be donated for the purpose. However, the board is authorized and directed to have prepared the necessary plans and specifications for such buildings as may be deemed necessary to establish said school, incurring the necessary expense of employing engineers and architects, which amount

is hereby authorized to be paid out of the contingency and emergency fund of the state. (1945, c. 459, s. 3.)

§ 116-142.4. Temporary quarters.—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the governor and council of state, is authorized and empowered to enter into an agreement with any other state institution or agency for the temporary use of any state owned property which such other state institution or agency may be able and willing to divert for the time being from its original purpose; and any other state institution or agency, which may be in possession of real estate suitable for the purpose of the negro training school for feeble minded children upon such terms as may be mutually agreed upon. (1945, c. 459, s. 4.)

§ 116-142.5. Authority and powers of board; classification of inmates.—The board of directors shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in their rehabilitation. (1945, c. 459, s. 5.)

§ 116-142.6. Superintendent.—The board of directors shall appoint a superintendent of the institution, who shall be a person of professional training and experience in the care and treatment of feeble minded persons, and may fix the compensation of the superintendent, subject to the approval of the budget bureau, and may discharge the superintendent at any time for cause. (1945, c. 459, s. 6.)

§ 116-142.7. Aims of school; application for admission.—The purpose and aim of the negro training school for feeble minded children is to segregate, care for, train, and educate, as their mentality will permit, the mental defectives among the negro children of the state; to disseminate knowledge concerning the extent, nature, and menace of mental deficiency and initiate methods for its control, reduction, and ultimate eradication and to that end, subject to such rules and regulations as the board of directors may adopt, there shall be received into said school feeble minded and mentally defective children of the negro race under the age of twenty-one years when, in the judgment of the board of directors, it is deemed advisable. Application for the admission of a child must be made by the father if the mother and father are living together, and if not, by the one having custody, or by a duly appointed guardian or by the superintendent of any county home or by person having management of any orphanage,

association, society, children's home, or other institution for the care of children to which the custody of such child has been committed, in which event the consent of the parents shall not be required. The applications for admission must be approved by the superintendent of public welfare and the judge of juvenile court of the county wherein the applicant resides (1945, c. 459, s. 7.)

§ 116-142.8. Regulation of admission; financial ability of parent or guardian.—The board of directors is hereby authorized and empowered to promulgate rules, regulations, and conditions of admission of pupils to the school and in cases in which the parents or guardian of a child are financially able, shall require such parents or guardian to transport the child to the school and make such contribution toward maintenance as may to the board of directors seem proper and just. (1945, c. 459, s. 8.)

§ 116-142.9. Discharge of inmate.—Any child entered into the school may be discharged therefrom or returned to his or her parents or guardian when, in the judgment of the directors, it will not be beneficial to such pupil or to the best interest of the school to be retained longer therein. (1945, c. 459, s. 9.)

§ 116-142.10. Offenses relating to inmates.—For the protection of the pupils residing in the school, it shall be unlawful:

(a) For any person to advise, or solicit, or to offer to advise or solicit, any inmate of said school to escape therefrom;

(b) For any person to transport, or to offer to transport, in automobile or other conveyances any inmate of said school to or from any place: Provided, this shall not apply to the superintendent and teachers of said school, or to employees or any other person acting under the superintendent and teachers thereof;

(c) For any person to engage in, or to offer to engage in, prostitution with any inmate of said school;

(d) For any person to receive, or to offer to receive, any inmate of said school into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said school to engage in prostitution;

(e) For any person to conceal an escaped inmate of said school, or to furnish clothing to an escaped inmate thereof to enable him or her to conceal his or her identity.

The term "inmate" as used in this section shall be construed to include any and all boys and girls, committed to, or received into, said negro training school for feeble minded children under the provisions of the law made and provided for the receiving and committing of persons to said school; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse.

Any person who shall knowingly and wilfully violate subsections (a) and (b) of this section shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court; any person who shall knowingly and wilfully violate subsections (c), (d) and (e) of this section shall be guilty of a felony, and shall be fined or imprisoned, or both

fined and imprisoned, in the discretion of the court. (1945, c. 459, s. 10.)

Art. 14. General Provisions as to Tuition Fees in Certain State Institutions.

§ 116-143. State-supported institutions required to charge tuition fees.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this article that all students in state institutions of higher learning shall be required to pay tuition, and that free tuition be and the same is hereby abolished, except such students as are physically disabled, and are so certified to be by the vocational rehabilitation division of the state board for vocational education, who shall be entitled to free tuition in any of the institutions named in this article. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586.)

Editor's Note.—The 1949 amendment inserted the words "and required academic fees" after the word "tuition" in line two of the second paragraph. As the first paragraph was not affected by the amendment it is not set out.

Art. 15. Educational Advantages for Children of World War Veterans.

§§ 116-145 to 116-148.1: Repealed by Session Laws 1951, c. 1160, s. 1.

§ 116-149. Definitions.—(a) As used in this article, "veteran" means a person who served as a member of the armed forces of the United States at any time between April 6, 1917, the date of the declaration of war with respect to the war known as World War I, and July 2, 1921, or between December 7, 1941, the date of the declaration of war with respect to the war known as World War II, and December 31, 1946, and who was separated from the armed forces under conditions other than dishonorable.

(b) As used in this article, "eligible child" means—

(1) A child of a veteran who was a legal resident of North Carolina at the time of said veteran's entrance into the armed forces, or

(2) A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. (1951, c. 1160, s. 1.)

Editor's Note.—The 1951 amendment rewrote this article which formerly consisted of sections 116-145 through 116-148.1. Section 2 of the amendatory act provided: "This act shall not have the effect of revoking or otherwise affecting any scholarship of tuition and fees or award of free room and board heretofore made pursuant to any law in force at the time such scholarship or award was granted, and such scholarships and awards shall continue in full force for the period for which granted."

§ 116-150. Scholarship.—A scholarship granted pursuant to this article shall consist of free tuition, room and a reasonable board allowance in any State educational institution and such other items and institutional services as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected.

Every applicant for benefits pursuant to this section shall furnish a statement from the United States veterans administration stating such facts as the administration records disclose showing that the applicant comes within the provisions of this article.

A scholarship granted pursuant to this article shall not extend for a longer period than four academic years with respect to any one child, which years, however, need not be consecutive. (1951, c. 1160, s. 1.)

§ 116-151. Classes of eligible children entitled to scholarships.—An eligible child shall be entitled to and granted a scholarship as provided by this article if such child falls within the provisions of any one of the three classes described below, subject to any limitations set out therein:

(1) Class I: Any eligible child whose father was killed in action or died from wounds or other causes while a member of the armed forces during either period of military service described in § 116-149, or whose father has died as a direct result of injuries, wounds, or other illness contracted during said period of service.

(2) Class II: Any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death, was suffering from, a service-connected disability of thirty per cent (30%) or more as rated by the United States veterans administration; provided, that benefits pursuant to § 116-150 for this class of eligible children shall be limited to not more than ten eligible children in

any one school year; and provided further, that if more than ten such eligible children apply for such benefits in any one school year the North Carolina veterans commission shall designate the ten children who shall receive such benefits. A statutory award for tuberculosis pulmonary arrested shall be considered as meeting the criteria of disability as set forth with respect to this class.

(3) Class III: Any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death was suffering from, one hundred per cent (100%) disability, as rated by the United States Veterans Administration, and drawing compensation therefor whether service-connected or otherwise; provided, that benefits pursuant to § 116-150 for this class of eligible children shall be limited to not more than fifteen children in any one school year, and, provided further, that if more than fifteen children of this class apply for such benefits in any one school year, the North Carolina veterans commission shall designate the fifteen children who shall receive such benefits. (1951, c. 1160, s. 1.)

116-152. Institution reimbursed for free room rent and board.—Any State educational institution furnishing free room rent and board allowance pursuant to this article shall be reimbursed therefor from the State contingency and emergency fund at such rate as the Director of the Budget may determine to be reasonable. (1951, c. 1160, s. 1.)

Chapter 117. Electrification.

Art. 4. Telephone Service and Telephone Membership Corporations.

117-29. Assistance from rural electrification authority in procuring adequate telephone service.

117-30. Telephone membership corporations.

117-31. Power of rural electrification authority to prosecute requested investigations.

117-32. Loans from federal agencies.

Art. 2. Electric Membership Corporations.

§ 117-6. Title of article.

Cited in *Carolina Power, etc., Co. v. Bowman*, 228 N. C. 319, 45 S. E. (2d) 531.

Art. 4. Telephone Service and Telephone Membership Corporations.

§ 117-29. Assistance from rural electrification authority in procuring adequate telephone service.

—Any number of persons residing in any rural community who are not provided with telephone service or are inadequately provided with same, may make application to the rural electrification authority, upon such form as may be provided by the rural electrification authority for assistance in securing telephone service, showing the circumstances of such community or communities with regard to telephone service and the need therefor. The rural electrification authority shall make an investigation of the situation with respect to telephone service in such rural community or

communities and if, upon investigation, it appears that such community or communities are not served with needed telephones or are inadequately served, the facts with reference thereto shall be collected by the rural electrification authority and the rural electrification authority shall promptly bring these facts to the attention of any telephone company serving the area, and shall make reasonable efforts to get such telephone company to provide the needed telephone service in such community or communities. (1945, c. 853, s. 1.)

§ 117-30. Telephone membership corporations.

—In the event it is ascertained by the rural electrification authority that the community or communities referred to in the foregoing section are in need of telephone service and that there is a sufficient number of persons to be served to justify such services, and the telephone company serving in the area in which the community or communities are located is unwilling to provide such service, a telephone membership corporation may be organized by such community or communities in the same manner that electric membership corporations may be formed under article two of this chapter, and all of the provisions of said article shall be applicable to the formation of telephone membership corporations and such corporations shall have all the authority, powers and duties of such a corporation when formed under the provisions of said article; except that the provisions of §§ 117-8 and 117-9 shall not be applicable to

the organization of a telephone membership corporation, and except that such corporation so formed shall have no authority to engage in any business except the telephone business necessary to serving the community or communities prescribed in the application: Provided, that the references in said article to "power lines" or "energy" as to such telephone membership corporations shall be construed to mean telephone lines and telephone service. Provided further, that nothing herein shall be construed to authorize any telephone membership corporation organized hereunder to duplicate any line or lines, systems or other means by which adequate telephone service is being furnished; or to build or construct a telephone line, or telephone lines, or telephone systems, or otherwise to provide facilities or means of furnishing telephone service to any person, community, town or city then being adequately served by a telephone company, corporation or system; or to provide telephone service in an unserved area while any telephone company, corporation or system is acting in good faith and with reasonable diligence in arranging to provide adequate telephone service to such person, community, town or city. (1945, c. 853, s. 2.)

§ 117-31. Power of rural electrification authority to prosecute requested investigations.—In investigating the application filed with the rural electrification authority under the provisions of § 117-30 of this article, the rural electrification authority shall have the authority to employ such personnel as shall be necessary to conduct surveys; to contact the telephone companies serving the general area for the purpose of arranging for extension of telephone service by such companies to such community or communities; to make estimates of the cost of the extension of telephone service to such community or communities; to call

upon the utilities commission of the state to fix such rates as will be applicable to such service; to secure for such community or communities any assistance which may be available from the federal government by gift or loan or in any other manner; to investigate all applications for the creation of telephone membership corporations and determine and pass upon the question of granting authority to form such corporation; to provide forms for making such applications, and to do all things necessary to a proper determination of the question of the establishment of such telephone membership corporations in keeping with the provisions of this article; to act as agent for any such telephone membership corporation in securing loans or grants from any agency of the United States government; to prescribe rules and regulations and the necessary blanks for such membership corporations in making applications for grants or loans from any agency of the United States government; to do all other acts and things which may be necessary to aid the rural communities in North Carolina in securing telephone service. (1945, c. 853, s. 3.)

§ 117-32. Loans from federal agencies.—Whenever any corporation organized under the provisions of this article desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, it shall apply through the North Carolina rural electrification authority and not direct to the United States agency, and the said North Carolina rural electrification authority alone shall have the authority to make application for grants or loans to any such corporation. Nothing in this article shall be deemed to authorize any county, city or town to engage in the telephone business. (1945, c. 853, s. 4.)

Chapter 118. Firemen's Relief Fund.

Art. 1. Fund Derived from Fire Insurance Companies.

Sec.

118-1.1. Definitions.

Art. 1. Fund Derived from Fire Insurance Companies.

§ 118-1.1. Definitions.—As used in this chapter, the words "city", "cities", "town" or "towns" shall also include and mean sanitary districts, school districts, rural fire districts and any other political subdivisions of the State having an organized fire department.

Whenever the clerk of any city or town is required to perform any act pursuant to this chapter, clerk shall mean the person so designated by the governing body or committee where there is no clerk. (1951, c. 1032, s. 1.)

§ 118-6. Trustees appointed; organization.—In each town or city complying with and deriving benefits from the provisions of this article, there shall be appointed a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be elected by the members of the

local fire department, two elected by the mayor and board of aldermen or other local governing body, the remaining member to be named by the commissioner of insurance. Their selection and term of office shall be as follows:

a. The members of the fire department shall hold an election each January to elect their representatives to above board. In January 1950, the firemen shall elect one member to serve for two years and one member to serve for one year, then each year in January thereafter, they shall elect only one member and his term of office shall be for two years.

b. The mayor and board of aldermen or other local governing body shall appoint, in January 1950, two representatives to above board. One to hold office for two years and one to hold office for one year and each year in January thereafter they shall appoint only one representative and his term of office shall be for two years.

c. The commissioner of insurance shall appoint one representative in January each year and he shall serve for one year.

All of the above trustees shall hold office for their elected or appointed time, or until their successors are elected or appointed, and shall serve

without pay for their services. They shall immediately after election and appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient bond in a sum equal to the amount of moneys in his hands, to be approved by the commissioner of insurance, for the faithful and proper discharge of the duties of his office. If the chief of the local fire department is not named on the board of trustees as above provided, he shall be ex officio a member, but without the privilege of voting on matters before the board. (1907, c. 831, s. 6; 1925, c. 41; 1945, c. 74, s. 1; 1947, c. 720; 1949, c. 1054; C. S. 6068.)

Editor's Note.—

The 1945 amendment added the last sentence. The 1947 amendment required the bond to be filed with the commissioner of insurance. And the 1949 amendment rewrote this section.

- § 118-7. Disbursements of funds by trustees.**
3. To safeguard any fireman who has honorably served for a period of five years in the fire service of his city or town from ever becoming an inmate of any almshouse.
4. To provide for the payment of any fireman's

assessment in the firemen's fraternal insurance fund of the state of North Carolina if the board of trustees finds as a fact that said fireman is unable to pay the said assessment by reason of disability. (1907, c. 831, s. 6; 1919, c. 180; Ex. Sess. 1921, c. 55; 1923, c. 22; 1925, c. 41; 1945, c. 74, s. 2; C. S. 6069.)

Local Modification.—Gastonia: 1945, c. 183; Mecklenburg: 1949, c. 728; city of Charlotte: 1947, c. 837; 1949, c. 728; city of Durham: 1951, c. 577.

Editor's Note.—

The 1945 amendment struck out the words "or actually dependent upon charity" formerly appearing at the end of subsection 3, and rewrote subsection 4. As the rest of the section was not affected by the amendment it is not set out.

Cited in Carroll v. North Carolina State Firemen's Ass'n, 230 N. C. 436, 53 S. E. (2d) 524.

Art. 2. State Appropriation.

§ 118-12. Application of fund.

A fireman may not sue the State Firemen's Association on a claim for benefits under this chapter. Carroll v. North Carolina State Firemen's Ass'n, 230 N. C. 436, 53 S. E. (2d) 524.

A claim for hospital expenses incurred as a result of an injury received by a fireman in the course of his duties does not come within the benefits provided for members of the State Firemen's Association. Carroll v. North Carolina State Firemen's Ass'n, 230 N. C. 436, 53 S. E. (2d) 524.

Chapter 119. Gasoline and Oil Inspection and Regulation.

Art. 1. Lubricating Oils.

Sec.
119-6. Inspection duties devolve upon commissioner of agriculture.

Art. 3. Gasoline and Oil Inspection.

119-23. Administration by commissioner of agriculture; collection of fees by department of revenue and payment into state treasury; "gasoline and oil inspection fund."

Art. 4. Equipment for Handling, etc., Liquefied Petroleum Gases.

- 119-48. "Liquefied petroleum gas" defined.
119-49. Declaration of necessity for regulations; regulations of commissioner of agriculture.
119-50. Regulation of use of containers.
119-51. Punishment for violations.
119-52. Restrictions on local regulations.

Art. 1. Lubricating Oils.

§ 119-6. Inspection duties devolve upon commissioner of agriculture.—The duties of inspection required by §§ 119-1 through 119-5 shall be performed by the commissioner of agriculture. (1933, c. 214, s. 9; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue."

Art. 3. Gasoline and Oil Inspection.

§ 119-23. Administration by commissioner of agriculture; collection of fees by department of revenue and payment into state treasury; "gasoline and oil inspection fund."—Gasoline and oil inspection fees or taxes shall be collected by, and reports relating thereto shall be made to, the department of revenue. The administration of the

gasoline and oil inspection law shall otherwise be administered by the commissioner of agriculture. All moneys received under the authority of the inspection laws of this state shall be paid into the state treasury and kept as a distinct fund, to be styled "The Gasoline and Oil Inspection Fund," and the amount remaining in such fund at June thirtieth and December thirty-first of each year shall be turned over to the general fund by the state treasurer. (1937, c. 425, s. 6; 1941, c. 36; 1949, c. 1167.)

Editor's Note.—The 1949 amendment rewrote the former first sentence to appear as the present first two sentences. The amendatory act, which specifically amended certain statutes, provides: "The administration of the Gasoline and Oil Inspection Law is hereby transferred from the department of revenue to the department of agriculture. The collection of the gasoline and oil inspection fee or tax shall still be made by the department of revenue in the manner in which it is now being collected. In order to effectuate the purposes of this act all statutes in which administrative duties relating to the Gasoline and Oil Inspection Law are imposed upon the commissioner of revenue are hereby amended so as to impose such duties upon the commissioner of agriculture."

§ 119-24. Report of operation and expenses to general assembly.—The commissioner of revenue shall include in his report to the general assembly an account of the operation and expenses of his phase of the gasoline and oil inspection law and the commissioner of agriculture shall include in his report to the general assembly an account of his portion of the operation and expenses of the gasoline and oil inspection law. (1937, c. 425, s. 7; 1949, c. 1167.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 119-25. Inspectors, clerks and assistants.—The commissioner of revenue and the commissioners of agriculture, respectively, shall appoint and employ such number of inspectors, clerks and assistants as may be necessary to administer and

effectively enforce all the provisions of the gasoline and oil inspection law with the administration or enforcement of which each said commissioner is charged.

(1949, c. 1167.)

Editor's Note.—The 1949 amendment rewrote the first sentence. As the rest of the section was not affected by the amendment it is not set out.

§ 119-26. Gasoline and oil inspection board created.—In order to more fully carry out the provisions of this article there is hereby created a gasoline and oil inspection board of five members, to be composed of the commissioner of agriculture, the director of the gasoline and oil inspection division, and three members to be appointed by the governor, who shall serve at his will. The commissioner of agriculture and the director of the gasoline and oil inspection division shall serve without additional compensation.

(1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue" in the first two sentences. As the rest of the section was not affected by the amendment it is not set out.

§ 119-28. Regulations for sale of substitutes.—All materials, fluids, or substances offered or exposed for sale, purporting to be substitutes for or motor fuel improvers, shall, before being sold, exposed or offered for sale, be submitted to the commissioner of agriculture for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the said commissioner of agriculture in writing. (1937, c. 425, s. 12; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "agriculture" for "revenue" in lines five and nine.

§ 119-29. Rules and regulations of board available to interested parties.—It shall be the duty of the commissioner of agriculture to make available for all interested parties the rules and regulations adopted by the gasoline and oil inspection board for the purpose of carrying into effect the laws relating to the inspection and transportation of petroleum products. (1937, c. 425, s. 13; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "agriculture" for "revenue" in line two.

§ 119-30. Establishment of laboratory for analysis of inspected products.—The commissioner of agriculture is authorized to provide for the analysis of samples of inspected articles by establishing a laboratory under the gasoline and oil inspection division for the analysis of inspected products. (1937, c. 425, s. 14; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "agriculture" for "revenue" in line two.

§ 119-31. Payment for samples taken for inspection.—The gasoline and oil inspectors shall pay at the regular market price, at the time the sample is taken, for each sample obtained for inspection purposes when request for payment is made: Provided, however, that no payment shall be made any retailer or distributor unless said retailer or distributor or his agent shall sign a receipt furnished by the commissioner of agriculture showing that payment has been made as requested. (1937, c. 425, s. 15; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue."

§ 119-32. Powers and authority of inspectors.

—The gasoline and oil inspectors shall have the right of access to the premises and records of any place where petroleum products are stored for the purpose of examination, inspection and/or drawing of samples, and said inspectors are hereby vested with the authority and powers of peace and police officers in the enforcement of motor fuel tax and inspection laws throughout the state including the authority to arrest, with or without warrants, and take offenders before the several courts of the state for prosecution or other proceedings, and seize or hold or deliver to the sheriff of the proper county all motor or other vehicles and all containers used in transporting motor fuels and/or other liquid petroleum products in violation of or without complying with the provisions of this article or the rules, regulations or requirements of the commissioner of agriculture and/or the gasoline and oil inspection board and also all motor fuels contained therein.

(1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue" near the end of the first sentence. As the rest of the section was not affected by the amendment it is not set out.

§ 119-33. Investigation and inspection of measuring equipment; devices calculated to falsify measures.—The gasoline and oil inspectors shall be required to investigate and inspect the equipment for measuring gasoline, kerosene, lubricating oil, and other liquid petroleum products. Said inspectors shall be under the supervision of the commissioner of agriculture, and are hereby vested with the same power and authority now given by law to inspectors of weights and measures, in so far as the same may be necessary to effectuate the provisions of this article. The rules, regulations, specifications and tolerance limits as promulgated by the national conference of weights and measures, and recommended by the United States bureau of standards, shall be observed by said inspectors in so far as they apply to the inspection of equipment used in measuring gasoline, kerosene, lubricating oil and other petroleum products. Inspectors of weights and measures appointed and maintained by the various counties and cities of the state shall have the same power and authority given by this section to inspectors under the supervision of the commissioner of agriculture. In all cases where it is found, after inspection, that the measuring equipment used in connection with the distribution of such products is inaccurate, the inspector shall condemn and seize all incorrect devices which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect, and in his best judgment may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the commissioner of agriculture.

(1949, c. 1167.)

Editor's Note.—The 1949 amendment struck out the words "commissioner of revenue" wherever they appeared in the first five sentences of this section and inserted in lieu thereof the words "commissioner of agriculture." As the rest of the section was not affected by the amendment it is not set out.

§ 119-34. Responsibility of retailers for quality of products.—The retail dealer shall be held responsible for the quality of the petroleum prod-

ucts he sells or offers for sale: Provided, however, that the retail dealer shall be released if the results of analysis of a sealed sample taken in a manner prescribed by the commissioner of agriculture at the time of delivery, and in the presence of the distributor or his agent, show that the product delivered by the distributor was of inferior quality. It shall be the duty of the distributor or his agent to assist in sampling the product delivered. (1937, c. 425, s. 18; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue."

§ 119-36. Certified copies of official tests admissible in evidence.—A certified copy of the official test of the analysis of any petroleum product, under the seal of the commissioner of agriculture, shall be admissible as evidence of the fact therein stated in any of the courts of this state on the trial of any issue involving the qualities of said product. (1937, c. 425, s. 20; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue."

§ 119-39. Violation a misdemeanor.—Unless another penalty is provided in this article, any person violating any of the provisions of this article or any of the rules and regulations of the commissioner of revenue or the commissioner of agriculture and/or the gasoline and oil inspection board shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 23; 1949, c. 1167.)

Editor's Note.—The 1949 amendment inserted the words "or the commissioner of agriculture."

§ 119-40. Manufacturers to notify commissioner of shipments.—Where oil or gasoline is shipped in tanks, cars, or other large containers, the manufacturer or jobber shall give notice to the commissioner of agriculture of their shipment, with the name and address of the person, company, or corporation to whom it is sent and the number of gallons, on the day the shipment is made. (1917, c. 166, s. 4; 1933, c. 214, s. 8; 1949, c. 1167; C. S. 4856.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue."

§ 119-41. Persons engaged in transporting are subject to inspection laws.—The owner or operator of any motor vehicle using the highways of this state or the owner or operator of any boat using the waters of this state transporting into, out of or between points in this state any gasoline or liquid motor fuel taxable in this state and/or any liquid petroleum product that is or may hereafter be made subject to inspection laws of this state shall make application to the commissioner of agriculture on forms to be provided by him for a liquid fuel carrier's permit. Upon receipt of said application, together with a signed agreement to comply with the provisions of the act and/or acts relating to the transportation of petroleum products subject to the motor fuel tax and/or inspection laws, the commissioner of agriculture shall, without any charge therefor, issue a numbered liquid fuel carrier's permit to the owner or operator of each motor vehicle or boat intended to be used in such transportation. Said

numbered liquid fuel carrier's permit shall show the motor number and license number of the motor vehicle and number or name of boat, and shall be prominently displayed on the motor vehicle or boat at all times. No person shall haul, transport, or convey any motor fuel over any of the public highways of this state except in vehicles plainly and visibly marked on the rear thereof with the word "Gasoline" in plain letters of not less than six inches high and of corresponding appropriate width, together with the name and address of the owner or lessee of the vehicle in letters of not less than four inches high: Provided, however, that this section shall not be construed to include the carrying of motor fuels in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle except when said fuel supply tank shall have a capacity of more than one hundred gallons. This section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five dollars. (1937, c. 425, s. 24; 1939, c. 276, s. 2; 1949, c. 1167; 1951, c. 370.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue" in the first two sentences.

The 1951 amendment inserted in the fourth sentence the words "or lessee."

§ 119-42. Persons engaged in transporting required to have in possession an invoice, bill of sale or bill of lading.

Such person engaged in transporting said motor fuels and/or other petroleum products shall, at the request of any agent of the commissioner of agriculture, exhibit for inspection such papers or documents immediately, and if said person fails to produce said papers or documents or if, when produced, they fail to clearly disclose said information, the agent of the commissioner of agriculture shall hold for investigation the vehicle and contents thereof.

(1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue" in the second sentence. As only this sentence was changed, the rest of the section is not set out.

§ 119-43. Display required on containers used in making deliveries.—Every person delivering at wholesale or retail any gasoline in this state shall deliver the same to the purchaser only in tanks, barrels, casks, cans, or other containers having the word "Gasoline" or the name of such other like products of petroleum, as the case may be, in English, plainly stenciled or labeled in colors to meet the requirements of the regulations adopted by the commissioner of agriculture and/or the gasoline and oil inspection board.

(1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue" near the end of the first sentence. As the rest of the section was not affected by the amendment it is not set out.

§ 119-44. Registration of exclusive industrial users of naphthas and coal tar solvents.—All per-

sons who are exclusive industrial users of naphtha and coal tar solvents, and who are not engaged in the business of selling motor fuel, may register with the commissioner of agriculture as an exclusive industrial user of naphthas and coal tar solvents upon the presentation of satisfactory evidence of such fact to said commissioner and the filing of a surety bond in approved form not to exceed the sum of one thousand dollars. Such registration, properly evidenced by the issuance of a certificate of registration as an exclusive industrial user of naphthas and coal tar solvents, will thereafter, and until such time as certificate of registration may be canceled by the commissioner of agriculture, permit licensed distributors of motor fuel in this state to sell naphthas and coal tar solvents to the holder of such certificate of registration upon the proper execution of an official certificate of industrial use in lieu of the collection of the motor fuel tax: Provided, however, that no licensed distributor of motor fuel shall sell gasoline tax free under the conditions of this article: Provided, further, that the rules and regulations adopted by the commissioner of agriculture for the proper administration and enforcement of this article shall be strictly adhered to by the holder of the certificate of registration under penalty of cancellation of such certificate for violation of or non-observance of such rules. (1937, c. 425, s. 27; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of revenue."

Art. 4. Equipment for Handling, etc., Liquefied Petroleum Gases.

§ 119-48. "Liquefied petroleum gas" defined.—As used in this article, the term "liquefied petroleum gas" shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butane or isobutane), and butylenes. (1947, c. 822, s. 1.)

§ 119-49. Declaration of necessity for regulations; regulations of commissioner of agriculture.—It is hereby declared that the regulation of the design, construction, location, installation and operation of equipment for the storing, handling, transporting by tank truck, tank trailer or otherwise and the utilization of liquefied petroleum gases and the specification of the odorization of said gases and the degree thereof are matters necessary to the preservation of the public health and safety. To that end, the commissioner of agriculture shall make and promulgate regulations setting forth minimum general standards covering the design, construction, location, installation and operation of the equipment for storing, handling, transporting by tank truck, tank trailer or otherwise and the utilization of liquefied petro-

leum gases and the specification of the odorization of said gases and the degree thereof. Said regulations shall be such as are reasonably necessary for the protection, health, welfare and safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same and in conformity with the published standards of the National Board of Fire Underwriters and as recommended by the National Fire Protection Association. Such regulations when adopted by the commissioner of agriculture shall be filed in the office of the secretary of state as provided by law. (1947, c. 822, s. 2; 1949, c. 1294.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of insurance." The amendatory act provides: "The administration of the equipment for handling, etc., liquefied petroleum gases, the same being article 4 of chapter 119 of the General Statutes of North Carolina, is hereby transferred from the department of insurance to the department of agriculture. In order to effectuate the purpose of this act, all statutes in which administrative duties relating to equipment for handling, etc., of liquefied petroleum gases are imposed upon the commissioner of insurance are hereby amended so as to impose such duties upon the commissioner of agriculture."

§ 119-50. Regulation of use of containers.—No person, firm or corporation other than the owner or those authorized by the owner so to do shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any liquefied petroleum gas container or receptacle for any gas, compound, or for any other purpose whatsoever. (1947, c. 822, s. 3.)

§ 119-51. Punishment for violations.—It shall be unlawful for any person, firm, association or corporation on or after the effective date of this article to violate any of the provisions hereof or of the lawful regulations of the commissioner of agriculture made pursuant hereto. Any person, firm, association or corporation violating any provisions of this article or said regulations hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or by imprisonment or by both fine and imprisonment in the discretion of the court. (1947, c. 822, s. 4; 1949, c. 1294.)

Editor's Note.—The 1949 amendment substituted "commissioner of agriculture" for "commissioner of insurance." This article became effective on April 4, 1947.

§ 119-52. Restrictions on local regulations.—No municipality or other political subdivision shall adopt or enforce any regulation in conflict with the provisions of this article or with the regulations promulgated pursuant hereto by the commissioner of insurance. (1947, c. 822, s. 5.)

Cross Reference.—See note to § 119-49.

Chapter 120. General Assembly.

Art 1. Apportionment of members.

Sec.

120-4. [Repealed.]

Art. 10. Influencing Public Opinion or Legislation.

120-48. Registration of persons and organizations engaged principally in influencing public opinion or legislation.

120-49. Information to be shown on docket.

120-50. Docket kept by secretary of state; record open to public.

120-51. Certain localized activities exempted.

120-52. Failure to comply with article made misdemeanor.

120-53. Time for registration by persons presently engaged in regulated activities.

120-54. Annual registration required.

120-55. Exemption of newspapers, radio, political candidates, etc.

Art. 1. Apportionment of members.

§ 120-3. Payment in installments or upon per diem basis; extra sessions.—The pay of the members and presiding officers for a regular session of the General Assembly as provided in article 2 of section 28 of the Constitution of North Carolina may be paid in installments, or upon a per diem basis, as asked for by the several members and presiding officers; provided, that in no instance shall installments or per diem amount to more than \$15.00 per day for the members and \$20.00 per day for the two presiding officers for the number of days the General Assembly has been in session, and the total pay of the presiding officers and members at a regular session shall in no case exceed \$1,800.00 for each presiding officer and \$1,350.00 for each member of both houses. And, provided further, that the pay for an extra session of the General Assembly shall be \$20.00 per day for presiding officers and \$15.00 per day for members for a period not to exceed 25 days. (1929, c. 2, s. 1; 1951, c. 23, s. 1.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 120-4: Repealed by Session Laws 1951, c. 23, s. 2.

Art. 6. Acts and Journals.

§ 120-22. Enrollment of acts.—All bills passed by the general assembly shall be enrolled for ratification under the supervision and direction of the secretary of state. Prior to enrolling any bill the secretary of state shall substitute the corresponding arabic numerals for any date or for any section number of the General Statutes or of any act of the general assembly which is written in words. All bills so enrolled shall be typewritten and carefully proof-read. The secretary of state is authorized and empowered to secure such equipment as may be required for this purpose, and from time to time during the sessions of the general assembly, to employ such number of competent and trained persons, not to exceed twelve at any one time, as may be necessary to perform this service. One of such number so employed shall be designated as chief enrolling clerk, and shall receive not to exceed the sum of six dollars (\$6.00) per day for his services, and

each of the others so employed shall receive not to exceed the sum of five dollars (\$5.00) per day for his services: Provided, that when the business of the general assembly has reached such a proportion that the employees authorized are unable to keep up with the enrollment of bills as they are passed, the secretary of state is hereby authorized to use the employees in the various state departments before and after office hours in the enrollment of such bills, and they shall be paid one cent per line upon certification made to the state auditor by the secretary of state. (Rev., s. 4422; 1903, c. 5; 1933, c. 173; 1945, c. 416, s. 1; 1947, c. 378; C. S. 6108.)

Editor's Note.—

The 1945 amendment substituted the present proviso at the end of this section for the former proviso which authorized the rules committees to increase or decrease the number of persons employed in the enrollment of bills.

Section 2 of the amendatory act provides that state employees borrowed and used to do work under the proviso shall not be entitled to receive any additional compensation for services which may be performed during their regular office hours.

The 1947 amendment inserted the second sentence.

Art. 7. Employees.

§ 120-33. Compensation of employees of the General Assembly; mileage.—The principal clerks of each house and the chief enrolling clerk shall be allowed the sum of fifteen dollars (\$15.00) per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The journal clerks, calendar clerks, chief engrossing clerks, reading clerks, and sergeant-at-arms in each house shall be allowed the sum of thirteen dollars (\$13.00) per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The assistants to the calendar clerk and the assistants to the journal clerk and the clerks to the committees on finance and appropriations of each house shall be allowed the sum of eleven dollars (\$11.00) per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The secretary to the speaker of the house of representatives, secretary to the lieutenant-governor, assistants to the engrossing clerks, assistants appointed by the Secretary of State to supervise enrolling of bills and resolutions, the clerks to all committees which under the rules of either house are entitled to clerks, the disbursing clerks and joint disbursing clerks shall be allowed the sum of ten dollars (\$10.00) per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from Raleigh to their homes and return. The typists, who are not stenographers, employed by either house of the General Assembly shall be allowed the sum of nine dollars (\$9.00) per day and mileage at the rate of ten cents per mile for one round trip only, from their homes to Raleigh and return. The chief pages of the house of representatives and the senate shall receive the sum of six dollars fifty cents (\$6.50) per day during the session of the General Assembly and

mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive the sum of five dollars (\$5.00) per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The chaplain of each house shall be allowed the sum of eight dollars (\$8.00) per day and mileage at the rate of ten cents per mile, for one round trip only, from his home to Raleigh and return. All laborers authorized by law or rules of either the house of representatives or the senate shall receive during the session of the General Assembly the sum of seven dollars (\$7.00) per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc. 1, 272; 1943, c. 393; 1945, c. 9; 1951, c. 2.)

Editor's Note.—

The 1951 amendment rewrote this section.

§ 120-35. Principal clerks; extra compensation.—The principal clerks of the general assembly shall be allowed seven hundred fifty dollars as a compensation for indexing the journals of their respective houses, and five hundred dollars each for extra work and for services required to be performed by them after the adjournment of each session of the general assembly, including the transcribing of a copy of their respective journals, which shall be filed in the office of the secretary of state. (Rev., s. 2732; Code, s. 2868; 1866-7, c. 71; 1881, c. 292; 1911, c. 116; 1919, c. 170; 1921, c. 160; 1947, c. 998; C. S. 3855.)

Editor's Note.—The 1947 amendment substituted "seven hundred fifty" for "four hundred" in line two.

Art. 10. Influencing Public Opinion or Legislation.

§ 120-48. Registration of persons and organizations engaged principally in influencing public opinion or legislation.—Every person, firm, corporation, association, or organization, whether by or through its agents, servants, employees or officers, who or which is principally engaged in the activity or business of influencing public opinion and/or legislation in this state shall, prior to engaging in such activity or business, cause his, or its name to be entered upon a docket in the office of the secretary of state of North Carolina, as hereinafter provided. (1947, c. 891, s. 1.)

Editor's Note.—For comment on this article, see 25 N. C. Law Rev. 458.

§ 120-49. Information to be shown on docket.—The following information shall be entered in such docket:

The name, business address of the principal and all branch offices of the applicant; the purpose or purposes for which such corporation, association, or organization was formed; the names of the principal officers, the names and addresses of its agents, servants, employees or officers by or through which it intends to carry on such activity or business in this state; a financial statement showing the assets and liabilities of the applicant and the source or sources of its income, itemizing

in detail any contributions, donations, gifts or other income and from what source or sources received. (1947, c. 891, s. 2.)

§ 120-50. Docket kept by secretary of state; record open to public.—The secretary of state shall prepare and keep in his office the docket containing the information required by § 120-49. Such record shall be a public record and shall be open to the inspection of any citizen at any time during the regular business hours of the office of the secretary of state. (1947, c. 891, s. 3.)

§ 120-51. Certain localized activities exempted.—This article shall not apply to any person, firm, corporation, or organization who or which is engaged in influencing public opinion on any matter which is applicable only to one county or one county and a county contiguous thereto. (1947, c. 891, s. 4.)

§ 120-52. Failure to comply with article made misdemeanor.—Any person, firm, corporation, association, or organization who or which shall engage in the activity or business herein described without first causing his, her, or its name to be entered upon such docket in the manner and form prescribed in this article shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court. (1947, c. 891, s. 5.)

§ 120-53. Time for registration by persons presently engaged in regulated activities.—All persons engaged in the activity or business herein described, upon the date of the ratification of this article, shall, within thirty days thereafter, cause his, her, or its name to be entered upon the docket in the office of the secretary of state of North Carolina in the manner and form prescribed by this article. (1947, c. 891, s. 6.)

The act from which this article was codified was ratified on April 5, 1947.

§ 120-54. Annual registration required.—Every person, firm, corporation, or organization engaging in the activity or business prescribed in this article shall, on or before the first day of January, 1948, and annually thereafter, again cause his, her, or its name to be entered upon such docket in the manner and form prescribed in this article. (1947, c. 891, s. 7.)

§ 120-55. Exemption of newspapers, radio, political candidates, etc.—This article shall not apply to persons, firms, corporations, or organizations who carry on such activity or business solely through the medium of newspapers, periodicals, magazines, or other like means which are or may be admitted under U. S. Postal regulations as second-class mail matter in the United States mails as defined in Title 39, Section 224, United States Code Annotated, and/or through radio, television or facsimile broadcast operations. This article shall also not apply to any person, firm, corporation, candidate in any political election campaign committee, or any committee, association, organization, or group of persons who or which have filed information as required by the Corrupt Practices Act of 1931. (1947, c. 891, s. 8.)

Chapter 121. State Department of Archives and History.

Sec.

121-1. Name.

121-2. Executive board.

121-3. Director; salary; removal.

121-4. Duties of the department.

121-5. Powers of the executive board.

121-6. Preservation of records; copies furnished.

121-7. Custody of emergency relief administration records; use of emergency relief administration funds.

§ 121-1. Name.—The archival and historical agency of the state of North Carolina shall be the state department of archives and history. (1945, c. 55.)

Editor's Note.—

The 1945 amendment rewrote this chapter.

§ 121-2. Executive board.—The department shall be governed by an executive board, composed of the seven persons heretofore appointed and now serving as the governing board of the department. At the expiration of the current term of each member, his successor shall be appointed by the governor for a term of six years and until his successor shall be appointed and qualified. Thereafter all members shall be appointed by the governor and their terms shall be for six years and until their successors shall be appointed and qualified. Four members of the board shall constitute a quorum. In case of a vacancy in any of the above terms, the person appointed to fill such vacancy shall serve only for the unexpired term and until his successor shall be appointed and qualified. The members of the board shall serve without salary, but shall be allowed their actual expenses when attending to their official duties, to be paid out of any funds appropriated for the maintenance of the department. (Rev., s. 4539; 1903, c. 767, s. 2; 1907, c. 714, s. 1; 1941, c. 306; 1943, c. 237; 1945, c. 55; C. S. 6141.)

§ 121-3. Director; salary; removal.—The executive board shall elect a director of the department whose duty it shall be, under the supervision of the board, to direct and administer the work and activities of the department as defined and specified by law. The director shall have authority, with the approval of the board, to make rules and regulations covering the administration and use of the materials in the custody of the department. He shall serve at a salary to be fixed by the board and approved by the budget bureau. The board, after proper notice and hearing, may remove the director from office for neglect of duty, malfeasance, misfeasance, or nonfeasance in office. The director may employ such other qualified persons as may be needed to perform the work and carry out the duties of the department, as defined by law. (1945, c. 55.)

§ 121-4. Duties of the department.—The following shall be the duties of the department:

(1) To preserve and administer such public archives as shall be transferred to its custody, and to collect, preserve, and administer private and unofficial historical records and relics relating to the history of North Carolina and the territory included therein from the earliest times. The department shall carefully protect and preserve such

materials from deterioration, mutilation, loss, or destruction, and, when feasible, shall collate, classify, and file them according to approved archival practices, and shall permit them, at reasonable times and under the supervision of the department, to be inspected, examined, or copied: Provided, any materials placed in the keeping of the department under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions;

(2) To promote and encourage throughout the state the preservation and proper care of archives, historical manuscripts, and other historical materials;

(3) To encourage and assist in the proper marking and preservation of places of importance in the history of the state;

(4) To have materials on the history of North Carolina properly edited, published as other state printing, and distributed under the direction of the department;

(5) To maintain a historical museum, to collect and preserve therein artifacts, curios, relics, and any other objects whatsoever which are of historical significance to North Carolina, and when feasible to display such objects. The museum shall be free to all visitors at reasonable times to be determined by the department;

(6) To make to the governor a biennial report of its receipts and expenditures, its activities and its needs, including recommendations for improving and broadening its services to the state, to be transmitted by the governor to the general assembly;

(7) To cooperate with and assist, in so far as practicable, historical and other organizations engaged in activities in the fields of North Carolina archives and history. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55; C. S. 6142.)

Cross Reference.—As to official records of inoperative boards and agencies, see § 143-268.

§ 121-5. Powers of the executive board.—The following shall be the powers of the board:

(1) To adopt a seal for use in official business;

(2) To adopt rules for its own government not inconsistent with the provisions of the laws of the state of North Carolina;

(3) To fix a reasonable price for any of its publications and to devote the revenue arising from such sales to the work of the department;

(4) To control the expenditure of such funds as may be appropriated for the department, subject to the provisions of the executive budget act;

(5) To accept gifts, bequests, and endowments for purposes which fall within the general legal powers and duties of the department. Unless otherwise specified by the donor or legator, the board may either expend both the principal and interest of any gift or bequest or may invest such funds, in whole or in part, in such securities as those in which the state sinking fund may be invested. (1907, c. 714, s. 3; 1935, c. 40; 1943, c. 237; 1945, c. 55; C. S. 6143.)

§ 121-6. Preservation of records; copies furnished.—Any state, county, town, or other public official is hereby authorized and empowered to turn over to the department any state, county,

town, or other public records no longer in current official use, and the department is authorized in its discretion to accept such records, and having done so, shall provide for their administration and preservation. When such records have been thus surrendered, photographs, photocopies, microfilms, typescripts, manuscripts, or other copies of them shall be made and certified by such person or persons as may be authorized by the executive board for this purpose, under the seal of the department, upon application of any person, which certification shall have the same force and effect as if made by the official or agency by which the records were transferred to the department, and the department may charge reasonable fees for such copies.

When the custodian of official state records certifies to the director of the state department of archives and history that such records have no further use or value for official or administrative purposes and when the state department of archives and history states that such records appear to have no further use or value for historical research or other scholarly purposes, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, town, or other governmental agency certifies to the state department of archives and history that such records have no further use or value for official business and when the director of the state department of archives and history states that such records appear to have no further use or value for historical research or other scholarly purposes, then such records may be authorized by the governing body of said county, city, town, or other governmental agency to be destroyed or otherwise disposed of by the agency having custody of them. The executive board of

the department is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. (1907, c. 714, s. 5; 1939, c. 249; 1943, c. 237; 1945, c. 55; C. S. 6145.)

§ 121-7. Custody of emergency relief administration records; use of emergency relief administration funds.—The emergency relief administration records of North Carolina shall be turned over to the state department of archives and history to be arranged, classified, and made available for public investigation under the rules and regulations of said department in accordance with the other provisions of this law. When the department deems it advisable, microfilms, photocopies, or other copies of these records may be made and preserved in lieu of the original records, which may thereupon be destroyed or otherwise disposed of.

For the purpose of carrying out the provisions of this section the governor and council of state shall allot the remaining funds granted to the state of North Carolina for the emergency relief administration or any such funds hereafter accruing from claims, collections, or otherwise, to the state department of archives and history, to be used in arranging, classifying, microfilming, photocopying or otherwise copying, and making available to the public the said records in accordance with the purpose of the funds. The said funds are to be disbursed in accordance with and under the terms of the executive budget act.

Any balance remaining in the said funds after these records are arranged, classified, and made available to the public by the state department of archives and history shall revert to the state board of charities and public welfare. (1941, c. 252; 1943, c. 237; 1945, c. 55.)

Chapter 122. Hospitals for the Mentally Disordered.

Art. 1. Organization and Management.

Sec.

- 122-1.1. Authority to establish other mental health activities; treatment of alcoholism.
- 122-2.1. Power to acquire and hold property conveyed by federal government.
- 122-3. Division of patients among the several institutions under the North Carolina hospitals board of control.
- 122-4. Division of territory among the several institutions under the North Carolina hospitals board of control.
- 122-5. Care and treatment of Indians in mental hospitals.
- 122-6. Epileptics cared for at Raleigh, Goldsboro and other hospitals.
- 122-11.5. [Repealed.]

Art. 2. Officers and Employees.

- 122-27. Superintendent to notify of escape or revocation of probation of inmate.

Art. 3. Admission of Patients.

- 122-36. Persons entitled to immediate admission if space available.

Sec.

- 122-37. Mental defectives admitted.
- 122-39. Only bona fide residents entitled to care in state mental hospitals.
- 122-41. County of settlement.
- 122-42. Affidavit of mental disorder and request for examination.
- 122-43. Clerk to issue an order for examination.
- 122-45. [Repealed.]
- 122-46. Clerk to commit for observation in a hospital, for commitment, release or discharge.
- 122-46.1. Clerk may make final commitment to hospital.
- 122-47 to 122-49. [Repealed.]
- 122-49.1. Withdrawal of petition.
- 122-57. Commitment in case of sudden or violent mental disorder.
- 122-62. Commitment upon patient's application.
- 122-63. Proceedings in case of a mentally disordered citizen of another state.
- 122-63.1. Transfer of mentally disordered citizens of North Carolina from another state to North Carolina.
- 122-63.2. Reciprocal agreements with other states to set requirements to state hospital care.

Sec.
122-65. Mentally disordered person temporarily committed.

Art. 4. Discharge of Patients.

- 122-66. County commissioners may discharge mentally disordered person in county.
122-67. Release of patients from hospital; responsibility of county.
122-68.1. Superintendent must notify commissioner of mental health, and state hospitals board of control of unusually dangerous mentally disordered patients.
122-69 to 122-71. [Repealed.]

Art. 5. Private Hospitals for the Mentally Disordered.

- 122-75. Mentally disordered persons placed in private hospital.
122-76. [Repealed.]
122-81. Guardian of mentally disordered person to pay expenses out of estate.
122-81.1. Commitment upon patient's application to private hospital.
122-82.1. Superintendent must notify clerk of court when mentally disordered person is paroled or discharged.
122-82.2. Superintendent must notify of escape.

Art. 6. Mentally Disordered Criminals.

- 122-83. Mentally disordered persons charged with crime to be committed to hospital.
122-84. Persons acquitted of certain crimes or incapable of being tried, on account of mental disorder, committed to hospital; return for trial; detention for treatment.
122-85. Convicts becoming mentally disordered committed to hospital.
122-86. Persons acquitted of crime on account of mental disorder; how discharged from hospital.
122-88. Ex-convicts with homicidal tendency committed to hospital.
122-91. Alleged criminal may be committed for observation.

Art. 7. Camp Butner Hospital.

- 122-92. Acquisition of Camp Butner Hospital authorized.
122-93. Disposition of surplus real property.
122-94. Application of state highway and motor vehicle laws to roads, etc., at Camp Butner; penalty for violations.
122-95. Ordinances and regulations for enforcement of article.
122-96. Recordation of ordinances and regulations; printing and distribution.
122-97. Violations made misdemeanor.
122-98. Designation of special police officers.

Art. 1. Organization and Management.

§ 122-1. Incorporation and names.—The hospital for the mentally disordered, located near Morganton, shall be and remain a corporation under this name: The state hospital at Morganton. The hospital for the mentally disordered, located near Raleigh, shall be and remain a corporation under this name: The state hospital at Raleigh. The hospital for the mentally disordered, located near Goldsboro, shall be and remain a corpora-

tion under this name: The state hospital at Goldsboro. The North Carolina hospitals board of control shall be authorized to acquire property and to establish, operate and maintain thereon a hospital or institution and to exercise with respect to such hospital or institution the same property rights and powers as are exercised by it with respect to the state hospitals above referred to. Under their respective names each corporation is invested with all the property and rights heretofore held by each, under whatsoever name called or incorporated, and all other corporate names are hereby abolished. Hereafter in this chapter, when the above names are used, they shall be deemed to relate back to and include the corporation under whatsoever name it might heretofore have had. (Rev., s. 4542; Code, ss. 2227, 2240; 1899, c. 1, s. 1; 1945, c. 952, s. 8; 1947, c. 537, s. 2; C. S. 6151.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane." Prior to section 7 of the amendatory law the title of this chapter was "Hospital for the Insane."

The 1947 amendment inserted the fourth sentence relating to hospitals board of control.

As to Camp Butner Hospital, see §§ 122-92 to 122-98.

Chapter 537 of Session Laws 1947, which amended or inserted various sections of this article, provides in section 1: "The purposes of this act shall be to authorize the North Carolina hospitals board of control to acquire Camp Butner to establish there an institution similar to the other state hospitals and a colony of feeble-minded. To authorize the transfer there of patients and children from the other institutions under the North Carolina hospitals board of control. To authorize the transfer of patients or inmates between the institutions under the control of the North Carolina hospitals board of control, and to authorize rules and regulations in regard to admission of persons to these institutions. To simplify the commitment laws for state hospitals; also to provide for release, discharge and termination of commitment of patients. To authorize the North Carolina hospitals board of control to establish requirements for care in state hospitals of this state and to make reciprocal agreements with other states in this regard, and to authorize the interstate transfer of mental patients. To provide a means to obtain authority for emergency life saving operations on inmates of state institutions, when the family cannot be reached and permission obtained."

§ 122-1.1. Authority to establish other mental health activities; treatment of alcoholism.—The North Carolina hospitals board of control shall be and hereby is empowered to set up on property now held or hereafter acquired mental health facilities for the care and treatment of persons suffering from alcoholism. It is authorized to establish rules and regulations for the admission, care, and treatment of such persons, and to determine costs, and to set rates for the maintenance of these persons. The North Carolina hospitals board of control may itself operate such facilities directly, or in cooperation with the state board of alcoholic control, or may delegate such operation. The state board of health and the state department of public welfare shall act in an advisory capacity in the operation of these facilities. (1949, c. 1206, s. 1.)

Editor's Note.—As to alcoholic rehabilitation fund, see Session Laws 1949, c. 1206, s. 2.

§ 122-2. Power to acquire and hold property.—The state hospital at Morganton, the state hospital at Goldsboro, and any institution established, operated and maintained by the North Carolina hospitals board of control, may each acquire and hold, for the purpose of its institution, real and personal property by devise, bequest, or by any

manner of gift, purchase or conveyance whatsoever. (Rev., s. 4543; 1899, c. 1, s. 2; 1947, c. 537, s. 3; C. S. 6152.)

Editor's Note.—The 1947 amendment omitted the former reference to the state hospital at Raleigh and inserted the words "and any institution established, operated and maintained by the North Carolina hospitals board of control."

§ 122-2.1. Power to acquire and hold property conveyed by federal government.—The North Carolina hospitals board of control shall be and is authorized and empowered to accept, acquire and hold any real or personal property conveyed to it by an agency of the federal government with such reversionary restrictions imposed upon it by federal statute. The North Carolina hospitals board of control may use and maintain such property in the same manner as if it held title in fee simple, and may construct such buildings upon it as are necessary to accomplish the purposes of the institution. (1947, c. 537, s. 4.)

§ 122-3. Division of patients among the several institutions under the North Carolina hospitals board of control.—The state hospital at Raleigh and the state hospital at Morganton shall be exclusively for the accommodation, maintenance, care and treatment of white mentally disordered persons of the state, and the state hospital at Goldsboro shall be exclusively for the accommodation, maintenance, care and treatment for the colored mentally disordered, epileptic, feeble-minded, and inebriate of the state.

White epileptics shall be admitted to the State Hospital at Raleigh as now provided by law, and may by action of the North Carolina hospitals board of control be transferred to another institution under the North Carolina hospitals board of control when in the opinion of the board such is in the best interests of the epileptic patients and the institutions.

The North Carolina hospitals board of control shall have the authority to establish rules and regulations not contrary to law governing the admission of persons to any state hospital or other institution under its control which is now or may be established. Clerks of superior court of the several counties of the state may make commitments to such institutions in the same manner now provided by law for the several state hospitals and Caswell Training School.

The North Carolina hospitals board of control is hereby given authority to admit certain classes of patients to any one of the institutions under its control and shall notify the clerks of the superior court of its action. Sections 116-129 through 116-137 shall apply to any colonies for feeble-minded persons and to feeble-minded persons held in any colonies providing that § 116-135 shall apply only to Caswell Training School. (1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 5; C. S. 6153(a).)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-4. Division of territory among the several institutions under the North Carolina hospitals board of control.—It shall be the duty of the North Carolina hospitals board of control to designate territories for the state hospital at Raleigh, the state hospital at Morganton and any state hospitals or institutions now or hereafter estab-

lished for the admission of the white mentally disordered persons of the state, with authority to change said territories when deemed necessary. It shall notify the clerks of superior court of the counties of the territories designated and of any change of these territories. (1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 6; C. S. 6153(a).)

Editor's Note.—

The 1947 amendment rewrote this section.

§ 122-5. Care and treatment of Indians in mental hospitals.—The authorities of the state hospital at Raleigh and the state hospital at Morganton may also receive for care and treatment mentally disordered, epileptic, and inebriate Indians who are resident within the state, and who may, within the discretion of the superintendent, be assigned to any of the wards of the hospitals. (1919, c. 211; 1945, c. 952, s. 10; 1947, c. 537, s. 7; C. S. 6154.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

The 1947 amendment rewrote this section.

§ 122-6. Epileptics cared for at Raleigh, Goldsboro and other hospitals.—Whenever it becomes necessary for any person of this state afflicted with the disease known as epilepsy to be confined or to receive hospital treatment, such person shall be committed by the clerks of superior court of the several counties in the manner now provided by law for the commitment of mentally disordered persons to the several hospitals for the mentally disordered. Commitment of negro epileptic persons shall be made to the state hospital at Goldsboro. Commitment of white epileptic persons shall be made to the state hospital at Raleigh. The superintendents of the state hospitals to which such epileptic persons have been committed or transferred shall receive, care for, maintain and treat such persons as are afflicted if necessary to prevent them from becoming public charges, to the extent of the facilities of the hospital.

Charges for the patients shall be made in the same manner as now provided by law for care of mentally disordered persons. (1909, c. 910, ss. 1, 2; 1945, c. 952, s. 11; 1947, c. 537, s. 8; C. S. 6155.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

The 1947 amendment rewrote this section.

§ 122-7. Management of certain institutions by unified board of directors; appointment; quorum; term of office.—The following institutions of this state shall be under the management of one board of directors composed of fifteen members, all of whom shall be appointed by the governor of North Carolina: the state hospital at Raleigh, the state hospital at Morganton, the state hospital at Goldsboro, and the Caswell training school at Kinston. In order that all sections of the state shall have representation on said board, the governor shall name one member from each congressional district of the state and three members at large on said board. The board of directors to be named from congressional districts shall be divided into four classes of three directors each, the first class to serve for a period of one year, the second class to serve for a period of two years, the third class to serve for a period of three years,

the fourth class to serve for a period of four years, and the three directors at large to serve for a period of four years, and at the expiration of their respective terms of office all appointments shall be for a term of four years, except such as are made to fill unexpired terms. Eight directors shall constitute a quorum.

Members of the board shall serve for terms as prescribed above, and until their successors are appointed and qualified. The governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the state to remove such person, and the governor shall not be required to give any reason for such removal. (1921, c. 183, s. 2; 1925, c. 306, s. 3; 1943, c. 136, s. 2; 1945, c. 925, s. 1; C. S. 6159(a).)

Editor's Note.—The 1945 amendment, effective April 1, 1945, rewrote all of this section except the second paragraph.

For comment on the 1943 amendment to this and two following sections, see 21 N. C. Law Rev. 353.

§ 122-11. Meetings of directors.—The board of directors shall convene annually at each of the institutions enumerated in § 122-7 at a time to be fixed by such board and at such other times as it shall appoint, and investigate the administration and condition of said institutions. (Rev., 4550; 1899, c. 1, s. 8; 1917, c. 150, s. 1; 1943, c. 136, s. 5; C. S. 6161.)

Editor's Note.—

This section is set out in full to correct a typographical error in the original.

§ 122-11.2. Superintendent of mental hygiene.

He shall be employed for a period of six years from and after the date of his selection, unless sooner removed therefrom by the board for incompetence or misconduct.

(1945, c. 925, s. 2.)

Editor's Note.—The 1945 amendment, effective April 1, 1945, substituted "six" for "two" in the third sentence. As the rest of the section was not affected by the amendment it is not set out.

§ 122-11.3. Business manager for institutions.

The said general business manager shall be employed for a period of six years from and after the time of his selection, unless sooner removed by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no other office or position of employment.

(1945, c. 925, s. 3.)

Editor's Note.—The 1945 amendment, effective April 1, 1945, substituted "six" for "two" in line two of the second paragraph. As the rest of the section was not affected by the amendment it is not set out.

§ 122-11.5: Repealed by Session Laws 1945, c. 925, s. 4.

§ 122-13. Transfer of patients from one hospital to another; transfer of funds.—The North Carolina hospitals board of control is authorized to make such rules and regulations as in its discretion may seem best for the transfer of patients from one state hospital or institution under its control to another state hospital or institution under its control; and it is further authorized and empowered to transfer from one state hospital for the mentally disordered any funds appropriated for permanent improvement or maintenance, if in their discretion and judgment it may become advisable or necessary. (1919, c. 330; 1947, c. 537, s. 9; C. S. 6163.)

3 N. C.—10

Editor's Note.—Prior to the 1947 amendment the authority conferred by this section was vested in the former unified board of directors.

§ 122-14. Delivery of inmates to Federal agencies.—The directors and superintendents of the state hospital at Raleigh, the state hospital at Morganton and the state hospital at Goldsboro are hereby authorized, empowered and directed to transfer and deliver to the United States veterans bureau or other appropriate department or bureau of the United States government or to the representatives or agents of such veterans bureau or other department or bureau of said government, all inmates or prisoners, being soldiers or sailors who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said hospitals. And said directors and superintendents shall take from such Veterans Bureau or other department or bureau of said government, or its duly accredited representatives or agents, receipts of acknowledgments showing the delivery of such inmates or prisoners so transferred to the United States Government for the purpose of treatment under the laws and regulations of said government with respect to insane persons who have served in the military or naval forces of the United States. (1925, c. 51, s. 1; 1945, c. 925, s. 5; 1947, c. 623, s. 1.)

Editor's Note.—The 1945 amendment, effective April 1, 1945, made the section applicable to the State Hospital at Morganton, and the 1947 amendment struck out the word "insane" formerly appearing before the word "inmates" in line ten.

§ 122-17. Executive committee appointed.—The board of directors shall, out of their number, appoint five members as an executive committee, who shall hold their respective offices as such for one year, and shall have such powers and be subject to such duties as the board of directors may delegate to them. (Rev., s. 4548; 1899, c. 1, s. 6; 1917, c. 150, s. 1; 1945, c. 925, s. 6; C. S. 6165.)

Editor's Note.—The 1945 amendment, effective April 1, 1945, substituted "five" for "three" in line three.

§ 122-21. Fiscal year.—The close of the fiscal year shall be that established for all state agencies. (Rev., s. 4558; 1899, c. 1, s. 38; 1947, c. 537, s. 10; C. S. 6169.)

Editor's Note.—

The 1947 amendment rewrote this section.

Art. 2. Officers and Employees.

§ 122-27. Superintendent to notify of escape or revocation of probation of inmate.—When any inmate of a state hospital who has been released therefrom on probation has breached the conditions of his probation or when any inmate has escaped from a state hospital, the superintendent of the hospital shall immediately notify the committing physicians and the sheriff and clerk of court of the county in which such inmate is located at the time of such escape or breach of the conditions of probation. Upon the receipt of such notice, it shall be the duty of the sheriff to return such inmate to the hospital from which he has escaped or has been released on probation. The expense of returning such inmate shall be borne by the county of such inmate's legal settlement. (Rev., s. 4563; 1899, c. 1, s. 27; 1927, c. 114; 1945, c. 952, s. 12; C. S. 6175.)

Editor's Note.—The 1945 amendment rewrote this section.

Art. 3. Admission of Patients.

§ 122-36. Persons entitled to immediate admission if space available.—Any resident of North Carolina who has been legally adjudged by a clerk of court or other properly authorized person in accordance with the provisions of this chapter to be mentally disordered or a proper person to be committed to a state hospital for observation shall, if space is available, be entitled to immediate admission in the state hospital at Morganton, the state hospital at Raleigh, or the state hospital at Goldsboro, in accordance with the principles of division of race and residence prescribed in this chapter. No resident of this state who has been legally adjudged mentally disordered or a proper subject for observation and who has been presented to the superintendent of the proper state hospital for the mentally disordered as provided in this article, shall be refused admission thereto if space is available, but nothing in this article shall be construed to affect the discharge or transfer of patients as now provided by law.

Upon the admission of any such person, the superintendent of the institution shall notify the clerk of the superior court who has committed such person as mentally disordered, or as a proper subject for observation. (1919, c. 326, ss. 1, 6; 1945, c. 952, s. 13; C. S. 6184.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane," made the right to immediate admission dependent upon space being available, and added the second paragraph.

§ 122-37. Mental defectives admitted.—Any person with mental deficiency who in addition is suffering from epilepsy or a mental disorder may be admitted to the proper state hospital for the mentally disordered. Mental defective delinquents and low grade idiots who are unable to look after their own persons may be admitted to the Caswell training school. (Rev., s. 4572; 1899, c. 1, s. 18; 1933, c. 342, s. 2; 1945, c. 952, s. 14; C. S. 6185.)

Cross Reference.—As to training school for feeble minded negro children, see §§ 116-142.1 to 116-142.10.

Editor's Note.—The 1945 amendment rewrote this section.

§ 122-38. Priority given to indigent patients; payment required from others.—In the admission of patients to any state hospital, priority of admission shall be given to indigent persons; but the board of directors may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases. The board of directors may, if there be sufficient room, admit other than indigent patients, upon proper compensation, based upon the ability of the patient or his estate to pay. Where the clerk of court or the superintendent of the hospital has doubt as to the indigency of the mentally disordered person, he shall refer the question to the county department of public welfare for investigation. If any patient of any state hospital shall require private apartments, extras, or private nurses, the directors, if practicable, shall provide the same at a fair price to be paid by such patient. Upon the death of any nonindigent patient, the state hospital may maintain an action against his estate for his support and maintenance for a period of five years prior to his death. (Rev., s. 4573; 1899, c. 1, s. 44; 1915, c. 254; 1917, c. 150, s. 1; 1945, c. 952, s. 15; C. S. 6186.)

Editor's Note.—The 1945 amendment substituted "per-

sons" for "insane" in line three, and "patient" for "inmate" in the fourth sentence. The amendment also rewrote the second sentence and inserted the third sentence.

§ 122-39. Only bona fide residents entitled to care in state mental hospitals.—No clerk of superior court shall commit to any state hospital any mentally disordered person known to be a resident of another state or whose residence is unknown unless he shall state that the mentally disordered person is known to be resident of another state or that his residence is not known, and he shall give all available information concerning places in which he has been recently living.

The legal residence of a person as to his being entitled to mental hospital care shall be determined between this and the other state or states as elsewhere provided.

No person who shall have removed into this state while mentally disordered or while under commitment to a mental hospital in any other state, nor any person not a resident of North Carolina but under commitment to any mental institution, public or private, in this state shall be considered as a resident; and no length of residence in this state of such a person, while mentally disordered or under commitment, shall be sufficient to make him a resident of this State or entitled to state mental hospital care. (Rev., ss. 3591, 4587; 1899, c. 1, s. 18; 1945, c. 952, s. 16; 1947, c. 537, s. 11; C. S. 6187.)

The 1945 amendment substituted "mentally disordered" for "insane."

The 1947 amendment rewrote this section.

§ 122-40. Findings as to residence in examination reported.—In every examination of an alleged mentally disordered person it shall be the duty of the clerk or justice of the peace to particularly inquire whether the alleged mentally disordered person is a resident of this state, as hereinbefore set forth, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the alleged mentally disordered person and the clerk or the assistant clerk of court shall be of the opinion that the alleged mentally disordered person is a resident of this state, within the meaning of the law, and in all other respects would be a proper person to be committed as mentally disordered or for observation, he shall state that he was unable to ascertain the legal residence of the alleged mentally disordered person and shall commit him to the proper state hospital in accordance with the principles of divisions as to race and residence prescribed in this chapter. (Rev., s. 4588; 1899, c. 1, s. 18; 1945, c. 952, s. 17; C. S. 6188.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" in the first sentence and rewrote the second sentence.

§ 122-41. County of settlement.—For the purposes of this chapter, the county of settlement of an alleged mentally disordered person shall be the county of his actual residence at the time of his commitment to the state hospital, notwithstanding where such person may have been temporarily out of the county of settlement, in a hospital, or under court order an inmate of some other state institution at the time of his commitment to a state hospital, the county of residence shall not have been changed by his being temporarily out

of his county, in a hospital, or by his confinement under court order.

The provisions of this section shall not be construed as entitling a person to care and treatment in a mental hospital unless he is a bona fide citizen and resident of this state, and was so before mental disease became manifest. (Rev., s. 4574; 1899, c. 1, s. 28; 1945, c. 952, s. 18; 1947, c. 537, s. 12; C. S. 6189.)

Editor's Note.—The 1945 amendment substituted the words "for the mentally disordered" for the words "as insane."

The 1947 amendment rewrote this section.

§ 122-42. Affidavit of mental disorder and request for examination.—When it appears that a person is suffering from some mental disorder and is in need of observation or admission in a state hospital, some reliable person having knowledge of the facts shall make before the clerk of the superior court of the county in which alleged mentally disordered person is or resides, and file in writing, on a form approved by the North Carolina hospitals board of control, an affidavit that the alleged mentally disordered person is in need of observation or admission in a hospital for the mentally disordered, together with a request that an examination into the mental condition of the alleged mentally disordered person be made.

This affidavit may be sworn to before the clerk of the superior court, or the deputy clerk of court. (Rev., s. 4575; 1899, c. 1, s. 15; 1945, c. 952, s. 19; 1947, c. 537, s. 13; C. S. 6190.)

Editor's Note.—Prior to the 1945 amendment the affiant was required to be a resident of the county in which the alleged insane person resided.

The 1947 amendment rewrote this section which formerly set out the form of affidavit. Subsequently Session Laws 1947, c. 623, s. 2, purported to amend such omitted form.

§ 122-43. Clerk to issue an order for examination.—When an affidavit and request for examination of an alleged mentally disordered person has been made, or when the clerk of the superior court has other valid knowledge of the facts of the case to cause an examination to be made, he shall direct two physicians duly licensed to practice medicine by the state and not holding any office or appointment except advisory or consultative in the hospital to which commitment may be made, to examine the alleged mentally disordered person or shall have him brought to them in order to determine if a state of mental disorder exists and if it warrants commitment to one of the state hospitals or institutions for the mentally disordered. If the said physicians are satisfied that the alleged mentally disordered person should be committed for observation and admission into a hospital for the mentally disordered, they shall sign an affidavit to that effect on a form approved by the North Carolina hospitals board of control.

This affidavit may be sworn to before the clerk of the superior court, the assistant clerk of the superior court, or the deputy clerk of court, or a notary public. (Rev., s. 4576; 1899, c. 1, s. 15; 1945, c. 952, s. 20; 1947, c. 537, s. 14; C. S. 6191.)

Editor's Note.—The 1945 amendment rewrote this section. The 1947 amendment also rewrote this section which formerly set out the form of affidavit. Subsequently Session Laws 1947, c. 623, s. 3, purported to amend such omitted form.

§ 122-45: Repealed by Session Laws 1945, c. 952, s. 21.

§ 122-46. Clerk to commit for observation in a hospital, for commitment, release or discharge.—When the two physicians shall have certified that the alleged mentally disordered person is in need of observation and admission in a hospital for the mentally disordered and after the clerk has heard all proper witnesses he shall issue an order of commitment on form approved by the North Carolina hospitals board of control, which shall authorize the hospital to receive said person and there to examine him and observe his mental condition for a period not exceeding thirty days. The clerk may authorize the transfer of the said alleged mentally disordered person to the proper hospital, when notified by the superintendent that space is available.

The clerk shall transmit to the hospital information relevant to the mental condition of the alleged mentally disordered person. He shall certify as to the indigency of the mentally disordered person and any persons liable for the care of the person under §§ 35-33 or 143-117 et seq., on forms approved by the North Carolina hospitals board of control. (Rev., s. 4578; 1899, c. 1, s. 15; 1915, c. 204, s. 1; 1923, c. 144, s. 1; 1945, c. 952, s. 22; 1947, c. 537, s. 15; C. S. 6193.)

Editor's Note.—The 1945 and 1947 amendments rewrote this section.

§ 122-46.1. Clerk may make final commitment to hospital.—When such alleged mentally disordered person is committed to a state hospital for observation, the hospital authorities shall, at the expiration of thirty days, file with the clerk of the superior court of the county in which the alleged mentally disordered person resided, if known, if not known, with the clerk of the superior court who committed such alleged mentally disordered person for observation, a written report stating the conclusion reached by the hospital authorities as to the mental condition of the alleged mentally disordered person. Upon the basis of this report, the clerk of the superior court of the county in which the alleged mentally disordered person resided, or if such alleged mentally disordered person's residence is not known, the clerk of the superior court who committed him for observation is authorized to order said person discharged or to order him to remain at the hospital as a patient, as the facts may warrant. Any person who has been committed to any state hospital as mentally disordered as provided by law shall be and remain a charge of such state hospital until he has been discharged from said hospital or declared competent as otherwise provided by law.

At the end of the thirty-day observation period the superintendent of the state hospital in which the alleged mentally disordered person has been confined for a thirty-day period of observation may signify in writing to the clerk of the court of the county in which the alleged mentally disordered person is settled that his observation of the alleged mentally disordered person has not been completed and that a second thirty-day period of observation of the alleged mentally disordered person is requested. Whereupon the clerk of the superior court who committed the alleged mentally disordered person for observation is authorized to order said person to remain at the hospital as a patient for another thirty-day observation period. (1945, c. 952, s. 23.)

§§ 122-47 to 122-49: Repealed by Session Laws 1945, c. 952, s. 24.

§ 122-49.1. Withdrawal of petition.—The petitioner in proceeding to determine the mental health or mental disease of an alleged mentally disordered person may, at any time before the alleged mentally disordered person has been admitted to the particular state hospital, withdraw such petition by filing with the clerk of the superior court, in writing, a motion to this effect. The clerk with the written consent of the examining physicians is authorized to allow such motion. When such motion is allowed, the proceedings shall be deemed to be at an end. (1945, c. 952, s. 25; 1947, c. 537, s. 16.)

Editor's Note.—Prior to the 1947 amendment the petition could be withdrawn before the adjudication of mental disorder or mental health.

§ 122-50. Clerk to keep record of examinations and discharges.—The clerk will keep a record of all examinations of persons alleged to be mentally disordered, and he shall record in such record a brief summary of the proceedings and of his findings, and whenever a justice of the peace shall transmit to the clerk a report of his proceedings when he shall have examined a person under the powers granted under this chapter, the clerk shall make a record of his proceedings, and for recording the justice's proceedings he shall be entitled to a fee of twenty-five cents, to be paid by the county aforesaid, and he shall keep a record of all probations and discharges provided for in article four of this chapter. (Rev., s. 4586; 1899, c. 1, s. 17; 1945, c. 952, s. 26; C. S. 6197.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-51. Fees for examination.—The following fees shall be allowed to the officers who make the examination, and they shall be paid by the county in which the alleged mentally disordered person is settled:

To the clerk who makes the examination two dollars (\$2.00) and if the clerk goes to the place where the alleged mentally disordered person is or resides, five cents (5c) a mile each way in addition. This shall cover his entire costs in taking the examination and making out the necessary papers.

To the physician or physicians called in addition to or in the absence of the county physician the sum of five dollars (\$5.00). If the county physician is a salaried officer he is not allowed any fee for his services in this examination.

The sheriff shall be entitled to such fees as are now allowed by law for the service of a process of similar character. (Rev., ss. 4580, 4581; 1899, c. 1, s. 15; 1947, c. 537, s. 17; C. S. 6198.)

Editor's Note.—The 1947 amendment rewrote this section.

§ 122-52. Superintendent of hospital notified; attendant to convey patient.—Whenever an alleged mentally disordered person shall be entitled to admission in any one of the hospitals of the state as prescribed by law, and the clerk of the superior court or other officer authorized by law to find such person mentally disordered or a proper subject for observation has so found, it shall be the duty of the clerk or other officer forthwith to notify the superintendent of the

proper hospital, giving the name, race, sex and age of the patient; and it shall be the duty of such superintendent, unless said patient has been exposed to a contagious disease as hereinafter mentioned in this article, to send an attendant to bring such mentally disordered person to the hospital. Such attendant shall have all such rights as the sheriff or other officer has heretofore, and shall convey such mentally disordered person to the hospital. (1919, c. 326, s. 2; 1945, c. 952, s. 27; C. S. 6199.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane," and inserted in lines six and seven the words "for a proper subject for observation."

§ 122-53. Bill of expense sent to county commissioners.—Upon the arrival of such mentally disordered person at the hospital, the superintendent shall send to the board of commissioners of the county in which such mentally disordered person had a settlement a bill covering the costs of conveying such mentally disordered person to the hospital, including any fees that would now be allowed an officer, and it shall be the duty of the board of commissioners forthwith to repay to such hospital the amount of such bill. (1915, c. 204, s. 2; 1919, c. 326, s. 3; 1945, c. 952, s. 28; C. S. 6200.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-54. Failure of superintendent to send attendant; sheriff to act.—If the superintendent of any hospital for the mentally disordered in this state shall, for ten days after receiving a notice as prescribed in § 122-52, fail and neglect to send an attendant, as is prescribed by § 122-52, to bring such mentally disordered person to the hospital, it shall be the duty of the sheriff of the county from which the notice was sent to bring at the expense of the county such mentally disordered person to the state hospital, whereupon it shall be the duty of the said superintendent to receive said mentally disordered person and relieve said sheriff of his care.

Each female mentally disordered patient must be accompanied to the hospital by a member of her family; if a member of her family is not available, she must be accompanied by a female designated by the county superintendent of public welfare of the county of the patient's settlement, the expenses of said female attendant to be borne by the county commissioners. (1919, c. 326, s. 4; 1945, c. 952, s. 29; C. S. 6201.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" and added the second paragraph.

§ 122-55. Costs of conveying patients to and from hospital; how paid.—The cost and expenses of conveying every mentally disordered person to any hospital from any county, or of removing him from the hospital to his county, or of the return to the county of his settlement, as sane, shall be paid by the treasurer of such county, upon the order of its board of county commissioners. Whenever the board of commissioners shall be satisfied that such person has property sufficient to pay such cost and expenses, or that some other person liable for his support and maintenance has property sufficient to pay such costs and expenses as aforesaid, they shall bring an action and recover the amount paid from the said per-

son, or from the other person liable for his support and maintenance. (Rev., s. 4555; 1899, c. 1, s. 32; 1945, c. 952, s. 30; C. S. 6202.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-57. Commitment in case of sudden or violent mental disorder.—Whenever any citizen or resident of this state or any other state becomes suddenly or violently mentally disordered, he may be committed to the proper state hospital for the mentally disordered, private hospital, county hospital, or other suitable place, until adjudication can be made or for a period not exceeding ten days upon the affidavit of one physician not related by blood to the mentally disordered person and licensed to practice medicine in North Carolina, or by the order of the clerk of the superior court of the county in which the patient becomes suddenly or violently mentally disordered upon the application of a respectable citizen. The affidavit of the physician will be on a standard form provided by the state hospitals board of control for this purpose. The physician's signature upon this form must be sworn to before a notary public or a deputy sheriff. The physician's notarized signature to the standard form provided by the state hospitals board of control for the purposes enumerated in this section shall constitute authority for the temporary commitment of the alleged mentally disordered person who has become suddenly or violently mentally disordered without an order of the clerk of the superior court. Adjudication of a person temporarily committed under the provisions of this section may proceed without removing said person to the county of his residence. (Rev., s. 4582; 1899, c. 1, s. 16; 1945, c. 952, s. 31; C. S. 6204.)

Editor's Note.—The 1945 amendment rewrote this section.

§ 122-62. Commitment upon patient's application.—Any person believing himself to be of unsound mind or threatened with mental disorder may voluntarily commit himself to the proper hospital. The application for commitment shall be in the following form:

State of North Carolina, County of.....
I,, a resident of, County, North Carolina, being of mind capable of signifying my wishes, do hereby solicit admission as a patient in the State Hospital at.....
I agree in all respects to conform to the rules and regulations of said institution. I understand that I shall not be entitled to a discharge until I shall have given the superintendent ten days notice of my desire to be discharged.

Attest:.....
This application shall be accompanied by the certificate of a licensed physician, which certificate shall state that in the opinion of the physician the applicant is a fit subject for admission into a hospital, and that he recommends his admission. The certificate of the clerk of the superior court need not accompany this application, and the medical director of the State hospital shall not notify the clerk of court of the county of the residence of the patient of the discharge of the patient. The superintendent may, if he think it a proper application, receive the patient thus voluntarily

committed and treat him, but no report need to be made to the clerk of court of the county of his settlement. The superintendent and board of directors shall have the same control over patients who commit themselves voluntarily as they have over those committed under the regular proceedings hereinbefore provided except that a voluntary patient shall be entitled to a discharge after he shall have given the superintendent ten days notice of his desire to be discharged.

Final commitment of voluntarily committed patients must proceed through the same channels as in case of the involuntary commitment of an allegedly mentally disordered person. (Rev., s. 4593; 1899, c. 1, s. 49; 1917, c. 150, s. 1; 1945, c. 952, s. 32; C. S. 6209.)

Editor's Note.—The 1945 amendment substituted "mental disorder" for "insanity" in the first sentence, inserted the last sentence in the form of application, added the last paragraph of the section and made other changes.

§ 122-63. Proceedings in case of a mentally disordered citizen of another state.—If any person not a citizen of this state but of another state of the United States shall be ascertained to be mentally disordered, the clerk of superior court shall commit such mentally disordered person to the proper state hospital for the mentally disordered of this state, and shall record on the order of commitment his not being a resident of this state. He shall also give on the application such information available in regard to his proper residence. Upon the admission of such mentally disordered person, the superintendent of the hospital shall notify the North Carolina hospitals board of control that such person appears to be resident of another state, so that the board of control can take steps to establish such person's residence and have him transferred to the state in which he is legally resident.

After the legal residence of such mentally disordered person has been verified and confirmed by the state of his residence, such mentally disordered person shall be transferred to the state of his residence. If that state shall not provide for his removal to that state within a reasonable time, the superintendent of the state hospital shall cause him to be conveyed directly from the state hospital to the state of his legal residence and delivered there to the superintendent of the proper state hospital.

The cost of such proceedings and conveyance away from the state shall be borne by the county in which the person shall have been adjudged to be mentally disordered.

The provisions of this section shall apply only to such aforementioned mentally disordered persons who shall have been committed by the clerk of court to a state hospital, and shall not be construed to limit the responsibility of the state board of public welfare with respect to the return of any other nonresident to his state of residence. (Rev., s. 4584; 1899, c. 1, s. 16; 1945, c. 952, s. 33; 1947, c. 537, s. 18; C. S. 6210.)

Editor's Note.—The 1945 amendment substituted the words "mentally disordered" for the word "insane." The 1947 amendment rewrote this section.

§ 122-63.1. Transfer of mentally disordered citizens of North Carolina from another state to North Carolina.—When the North Carolina hospitals board of control or the state board of public

welfare shall have been notified by an agency of another state that there is confined within a state or psychiatric hospital of that state a mentally disordered person alleged to be a resident of the state of North Carolina, and shall have been given information to support the allegation and to aid in establishing such person's residence, the state board of public welfare shall determine the residence of the alleged resident and shall report its findings to the North Carolina hospitals board of control. On the basis of the findings of this investigation, and in accordance with the requirements for eligibility to state hospital care, the North Carolina hospitals board of control may authorize his return directly to the proper state hospital for the mentally disordered at the expense of the state in which he is already confined.

The commitment of such mentally disordered person in another state, and the authorization by the board of control of his return shall be sufficient authority for the superintendent of the state hospital to hold this patient for a reasonable length of time, not to exceed thirty days or until he can be committed. Commitment of said mentally disordered person shall be effected by the examination of the person by two licensed physicians not connected with the proper state hospital for the mentally disordered. The affidavits of these two physicians shall be forwarded to the clerk of the superior court of the county in which said mentally disordered person is settled, without removal of the person from the hospital. On the basis of these affidavits the clerk may order the alleged mentally disordered person for the usual thirty-day observation period. (1945, c. 952, s. 34; 1947, c. 537, s. 19.)

Editor's Note.—The 1947 amendment rewrote this section.

§ 122-63.2. Reciprocal agreements with other states to set requirements to state hospital care.—The North Carolina hospitals board of control shall have the authority to negotiate with the proper state agencies of other states in regard to the legal residence of any alleged mentally disordered person who shall have been or may be committed to any state hospital of this state and alleged to be a legal resident of another state, or who shall have been committed to the state hospital of any other state and alleged to be a legal resident of this state, and to make reciprocal agreements with the proper agencies of the other states for the care of these mentally disordered persons by and in the proper state.

Where the law of another state sets a definite period of time during which a person must have resided continuously within that state to be considered a legal resident or to be entitled to care and treatment in a state mental hospital, this same definite period of time may be taken as the length of time required by this state in order for the mentally disordered person to be entitled to care and treatment in a state mental hospital in this state. (1947, c. 537, s. 20.)

§ 122-65. Mentally disordered person temporarily committed.—When any person is found to be mentally disordered under any of the provisions of this chapter, and he cannot be immediately admitted to the proper hospital, and such person is also found to be subject to such acts of violence as threatened injury to himself and

danger to the community, and he cannot otherwise be properly restrained, he may be temporarily committed to a private hospital, county hospital, or other suitable place, or to the county jail until a more suitable provision can be made for his care. (Rev., s. 4594; 1899, c. 1, s. 45; 1951, c. 359; C. S. 6212.)

Editor's Note.—The 1951 amendment rewrote this section.

Art. 4. Discharge of Patients.

§ 122-66. County commissioners may discharge mentally disordered person in county.—It shall be the duty of the board of county commissioners, by proper order to that effect, to discharge any ascertained mentally disordered person in their county, not admitted to the appropriate hospital, and not committed for crime, when it shall appear upon the certificate of two respectable physicians, and the chairman of their board, that such mentally disordered person ought to be discharged if in a hospital. (Rev., s. 4595; 1899, c. 1, s. 20; 1945, c. 952, s. 35; C. S. 6213.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-67. Release of patients from hospital; responsibility of county.—When it shall appear that any mentally disordered person under commitment to and confined in a hospital for the mentally disordered but not charged with a crime or under sentence shall have shown improvement in his mental condition as to be able to care for himself, or when he shall have become no longer dangerous to the community and to himself, or when it shall appear that suitable provision can be made for the alleged mentally disordered person so that he will not be injurious or dangerous to himself or the community, the superintendent of the hospital may in his discretion release him on probation to the care of his guardian, relative, friends or of any responsible person or agency in the community, and may receive him back into the hospital without further order of commitment during the continuance of the order of commitment which shall not have been terminated by the action of the superintendent in releasing him on probation. The superintendent of the hospital may require of the person assuming responsibility for the mentally disordered patient released on probation reports relative to the patient's condition and evidence and assurance of responsibility.

The superintendent may terminate the release of such mentally disordered patient and order his arrest and return to the hospital, and the person responsible for the mentally disordered patient's care may notify the superintendent of the hospital or the clerk of superior court of the county in which the mentally disordered patient has residence or is now located, and the clerk of superior court so notified may order the mentally disordered patient held pending his return to the hospital. The superintendent shall from time to time notify the clerk of superior court of the county of the patient's residence of the release or probation of a patient for more than thirty days.

When the patient is indigent, the county may be required to pay for the transportation of the patient to the county of his settlement.

It shall be the duty of the sheriff of the county

to which a patient has been released, or in which he is found at the termination of his release on probation by the superintendent or by the clerk of superior court, to return him to the hospital to which he is under commitment; cost of such return shall be a charge on the county in which the mentally disordered patient is resident.

When a person under commitment has been released on probation to his own care or to his own family, and when he is no longer under the continued care and supervision of the hospital, as in a boarding home, and when he shall have been able to remain continuously out of the hospital without returning for the period of one year, he shall be regarded as recovered from his mental illness and no longer in need of care in a mental hospital, and shall be discharged from the order of commitment at the next succeeding discharge date of the hospital as provided by rules of the North Carolina hospitals board of control. (Rev., s. 4596; 1899, c. 1, s. 22; 1917, c. 150, s. 1; 1945, c. 952, s. 36; 1947, c. 537, s. 21; C. S. 6214.)

Editor's Note.—The 1945 amendment substituted the words "mentally disordered" for the word "insane" and made other changes.

The 1947 amendment rewrote this section.

§ 122-68. Superintendent may discharge patient temporarily.—Each superintendent may, for the space of thirty days, discharge upon probation any patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. (Rev., s. 4597; 1899, c. 1, s. 23; 1945, c. 952, s. 37; C. S. 6215.)

Editor's Note.—The 1945 amendment struck out, following the word "days" in line two, the words "or until the next meeting of the board of three directors provided for in the preceding section." The amendment also struck out the former second sentence relating to reporting probations.

§ 122-68.1. Superintendent must notify commissioner of mental health, and state hospitals board of control of unusually dangerous mentally disordered patients.—Whenever a person is found by the state hospital psychiatrists to be unusually dangerous to himself or others, the superintendent must notify the commissioner of mental health and the state hospitals board of control. Such a patient cannot be paroled without the agreement of the state hospitals board of control and the commissioner of mental health. If the commissioner of mental health finds that any patient in one of the state hospitals is unusually dangerous to himself or to others he may place the patient under the rules of this section. (1945, c. 952, s. 39.)

§§ 122-69 to 122-71: Repealed by Session Laws 1945, c. 952, s. 38.

Art. 5. Private Hospitals for the Mentally Disordered.

§ 122-72. Established under license and subject to control of board of charities.—It shall be lawful for any person or corporation to establish private hospitals, homes, or schools for the cure and treatment of mentally disordered persons, mental defectives, and feeble-minded persons and inebriates; but license to establish such hospitals, homes, or schools must, before the same are opened for patronage, be obtained from the state board of charities and public welfare, and such

hospitals, homes, or schools shall at all times be subject to the visitation of the said board or any member thereof, and each hospital, home, or school shall make to the board a semiannual report on the first days of January and July of each year. (1945, c. 952, s. 41.)

Cross Reference.—As to authority of state board of health to establish sanitary standards and methods of inspection for private hospitals, etc., see §§ 130-280 to 130-282.

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" and "mental defectives" for "idiots" in the first sentence.

Prior to Session Laws 1945, c. 952, s. 40, the title of this article was "Private Hospitals for the Insane."

§ 122-73. Counties and towns may establish hospitals.—Any county, city, or town may establish a hospital for the maintenance, care, and treatment of such mentally disordered persons as cannot be admitted into a state hospital, and of mental defectives and feeble-minded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the state board of charities and public welfare is given the same authority over such hospitals as is given them by the preceding section for private hospitals. (Rev., s. 4601; 1899, c. 1, s. 61; 1945, c. 952, s. 42; C. S. 6220.)

Editor's Note.—The 1945 amendment substituted the words "mentally disordered" for the word "insane" and the words "mental defectives" for the word "idiots."

§ 122-75. Mentally disordered persons placed in private hospital.—Whenever any person shall be found to be mentally disordered in the mode hereinbefore prescribed, and such person shall be possessed of an income sufficient to support those who may be legally dependent for support on the estate of such mentally disordered person, and, moreover, to support and maintain such mentally disordered person in any named hospital without the state, or any private hospital within the state, and such mentally disordered person, if of capable mind to signify such preference, shall, in writing, declare his wish to be placed in such hospital instead of being in a state hospital (or in case such mentally disordered person is incapable of declaring such preference, then the same may be declared by his guardian), and two respectable physicians who shall have examined such mentally disordered person, shall deem it proper, then it may be lawful for the clerk, together with said physicians, to recommend in writing that such mentally disordered person shall be placed in the hospital so chosen, as a patient thereof. (Rev., s. 4603; 1899, c. 1, s. 39; 1945, c. 952, s. 43; C. S. 6222.)

Editor's Note.—The 1945 amendment substituted the words "mentally disordered" for the word "insane." It also struck out the words "with the clerk of the court or justice of the peace who made the examination" formerly appearing after the word "person" in line eighteen. The amendment further struck out the words "or justice" formerly appearing after the word "clerk" near the end of the section.

§ 122-76: Repealed by Session Laws 1945, c. 952, s. 44.

§ 122-77. Clerk to report proceedings to judge.—The clerk of the court shall lay the proceedings before the judge of the superior court of the district in which such mentally disordered person may reside or be domiciled, and if he approves

them, he shall so declare in writing, and such proceedings, with the approval thereof, shall be recorded by the clerk. (Rev., s. 4605; 1899, c. 1, s. 42; 1945, c. 952, s. 45; C. S. 6224.)

Editor's Note.—The 1945 amendment substituted the words "mentally disordered" for the word "insane."

§ 122-78. Certified copy and approval of judge sufficient authority.—A certified copy of such proceedings, with the approval of a judge, shall be sufficient warrant to authorize any friend of such mentally disordered person appointed by the judge to remove him to the hospital designated. (Rev., s. 4606; 1899, c. 1, s. 43; 1945, c. 952, s. 46; C. S. 6225.)

Editor's Note.—The 1945 amendment substituted the words "mentally disordered" for the word "insane."

§ 122-79. Examination and commitment to private hospital.—When it is deemed advisable that any person, a citizen of North Carolina, or a citizen of another state or country temporarily sojourning in North Carolina, should be detained in the private hospital to which the person is to be committed within the state, two persons, one of whom must be a physician and who shall not be connected with this private hospital, shall make affidavit before a clerk of the superior court of this state or a notary public that they have carefully examined the alleged mentally disordered person; that they believe him to be a fit subject for commitment to a hospital for the mentally disordered, and that his detention and treatment will be for his benefit. This certificate shall be filed with and approved by the clerk of the superior court in the county in which the examination is held, or in the county in which the private hospital is located, and a certified copy of this certificate and approval of the clerk shall be deposited with the superintendent of the private hospital as his authority for holding the mentally disordered person. The clerk may, as he sees fit, order any mentally disordered person to be taken to a private hospital within the state instead of to one of the state hospitals and this order shall be sufficient authority for holding such mentally disordered person in such private hospital. Mental defectives, feeble-minded persons, and inebriates may be committed to and held in private hospitals or homes in this state in the manner hereinbefore prescribed for mentally disordered persons: Provided, that a period of detention in a private hospital or home of not less than one month and not more than six months shall be prescribed for inebriates, at the discretion of the clerk of the superior court approving the commitment. (Rev., s. 4607; 1903, c. 329, s. 2; 1945, c. 952, s. 47; 1949, c. 1060; C. S. 6226.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" and "mental defectives" for "idiots." It also rewrote the third sentence and made other changes.

Prior to the 1949 amendment the physician mentioned in the first sentence could not be connected with any private hospital, and the affidavit was to be made only before the clerk of the superior court. The amendment substituted in the third sentence the words "this order" for "his warrant."

§ 122-80. Patients transferred from state hospital to private hospital.—When it is deemed desirable that any patient of any state hospital be transferred to any licensed private hospital with-

in the state, the executive committee may so order, and a certified copy of the commitment on file at the state hospital and the order of the executive committee shall be sufficient warrant for holding the mentally disordered person, mental defective, or inebriate by the officers of the private hospital. (Rev., s. 4608; 1903, c. 329, s. 3; 1945, c. 952, s. 50; C. S. 6227.)

Editor's Note.—The 1945 amendment substituted "patient" for "inmate," "mentally disordered" for "insane" and "mental defective" for "idiot."

§ 122-81. Guardian of mentally disordered person to pay expenses out of estate.—It shall be the duty of any person having legal custody of the estate of a mentally disordered person, mental defective, or inebriate legally held in a private hospital to supply funds for his support in the hospital during his stay therein and so long as there may be sufficient funds for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate. (Rev., s. 4610; 1899, c. 1, s. 40; 1903, c. 329, s. 4; 1945, c. 952, s. 51; C. S. 6228.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" and "mental defective" for "idiot."

§ 122-81.1. Commitment upon patient's application to private hospital.—Any person believing himself to be of unsound mind or threatened with mental disorder may voluntarily commit himself to a private hospital within the state according to the procedure prescribed under § 122-62. (1945, c. 952, s. 47½.)

§ 122-82.1. Superintendent must notify clerk of court when mentally disordered person is paroled or discharged.—Whenever a patient who has been committed to a private hospital is paroled or discharged the committing clerk of court must be notified by the superintendent of the private hospital as provided for in the statutes relating to the state hospitals. (1945, c. 952, s. 48.)

§ 122-82.2. Superintendent must notify of escape.—Whenever a patient who has been committed to a private hospital escapes from that hospital the committing clerk of court, committing physicians, and the sheriff of the county in which the patient is settled must be notified by the superintendent of the private hospital. (1945, c. 952, s. 49.)

Art. 6. Mentally Disordered Criminals.

§ 122-83. Mentally disordered persons charged with crime to be committed to hospital.—All persons who may hereafter commit crime while mentally disordered, and all persons who, being charged with crime, are adjudged to be mentally disordered at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is mentally disordered and cannot plead, to the state hospital at Raleigh, if the alleged criminal is white, or to the state hospital at Goldsboro if the alleged criminal is colored, and if the alleged criminal is an Indian from Robeson county, to the state hospital at Raleigh, as provided for mentally disordered Indi-

ans from Robeson county, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this article, and they shall be treated, cared for, and maintained in said hospital. As a means of such care and treatment, the said boards of directors may make rules and regulations under which the persons so committed to said institutions may be employed in labor upon the farms of said institutions under such supervision as said boards of directors may direct: Provided, that the superintendent and medical director of the hospital shall determine, in each case, that such employment is advantageous in the physical or mental treatment of the particular inmate to be so employed. Their confinement in said hospital shall not be regarded as punishment for any offense. (Rev., s. 4617; 1899, c. 1, s. 63; 1923, c. 165, ss. 2, 3; 1927, c. 228; 1945, c. 952, s. 53; C. S. 6236.)

Cross Reference.—As to bringing insanity to attention of court and determination of present mental capacity, see note to § 122-84.

Editor's Note.—The 1945 amendment substituted in the first sentence "mentally disordered" for "insane."

Prior to Session Laws 1945, c. 952, s. 52, the title of this article was "Dangerous Insane."

§ 122-84. Persons acquitted of certain crimes or incapable of being tried, on account of mental disorder, committed to hospital; return for trial; detention for treatment.—When a person accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson, or other crime, shall have escaped indictment or shall have been acquitted upon trial upon the ground of mental disorder, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witness to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital designated in § 122-83. If upon such inquisition the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital designated in § 122-83, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under the previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior

court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent.

When a person committed to a State hospital under this section as unable to plead shall have been reported by the hospital to the court having jurisdiction as being mentally able to stand trial and plead, the said patient shall be returned to the court to stand trial as provided in § 122-87. If the hospital authorities feel that an outright discharge or release of said person (in the event he is found not guilty), would be harmful or dangerous to himself or the public at large involved, and that further care and treatment is necessary, said authorities will when reporting that he is able to stand trial and plead, make a request for his return for further care and treatment, in the event he is found not guilty.

If at the trial it is determined that the defendant is not guilty of a criminal offense and it appears to the trial judge that the State hospital in its report has requested that the defendant be returned to said hospital for further care and treatment as an outright discharge or release of said defendant would be harmful or dangerous to himself or the public at large, the trial judge shall commit said defendant to the proper State hospital for care and treatment and shall require him to remain at said hospital until discharged by the superintendent thereof upon the advice of the medical staff. (Rev., s. 4618; 1899, c. 1, s. 65; 1923, c. 165, s. 4; 1945, c. 952, s. 54; 1951, c. 989, s. 1; C. S. 6237.)

Editor's Note.—

The 1945 amendment substituted "mental disorder" for "insanity" in line seven of the first sentence. The 1951 amendment added the last two paragraphs.

How Question of Present Insanity of Accused Brought to Attention of Court.—The general assembly has prescribed no procedure by which the question of the present insanity or mental disorder of the person accused of crime may be brought to the attention of the court, or for the investigation by the court preliminary to adjudicating the question whether accused is so mentally disordered as to be incapable of making a rational defense. Hence, in the absence of an applicable statute, the investigation of the present insanity or mental disorder to determine whether the accused shall be put on trial, and the form of the investigation ordered, are controlled by the common law. *State v. Sullivan*, 229 N. C. 251, 49 S. E. (2d) 458.

How Mental Capacity of Accused Determined.—The manner and form of an inquiry to determine whether a person accused of crime has the mental capacity to plead to the indictment and prepare a rational defense is for the determination of the trial court in the exercise of its discretion, and the court may submit an issue as to the present mental capacity of defendant and the issue of his guilt or innocence of the offense charged at the same time. *State v. Sullivan*, 229 N. C. 251, 49 S. E. (2d) 458, discussed in 27 N. C. Law Rev. 258.

§ 122-85. Convicts becoming mentally disordered committed to hospital.—All convicts becoming mentally disordered after commitment to the state prison, and the fact being certified as now required by law in the case of other mentally disordered persons, shall be admitted to the hospital designated in § 122-83. In case of the expiration of the sentence of any convict, mentally disordered person, while such person is confined to the said hospital, such person shall be kept until restored to his right mind or such time as he may be considered harmless and incurable. (Rev., s. 4619; 1899, c. 1, s. 66; 1923, c. 165, s. 5; 1945, c. 952, s. 55; C. S. 6238.)

Editor's Note.—

The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-86. Persons acquitted of crime on account of mental disorder; how discharged from hospital.—No person acquitted of a capital felony on the ground of mental disorder, and committed to the hospital designated in § 122-83 shall be discharged therefrom unless an act authorizing his discharge be passed by the general assembly. No person acquitted of a crime of a less degree than a capital felony and committed to the hospital designated in § 122-83 shall be discharged therefrom except upon an order from the governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of mental disorder, shall be discharged from said hospital except upon the order of the judge of the district or of the judge holding the courts of the district in which he was tried: Provided, that nothing in this section shall be construed to prevent such person so confined in the hospitals designated in § 122-83 from applying to any judge having jurisdiction for a writ of habeas corpus. No judge issuing a writ of habeas corpus upon the application of such person shall order his discharge until the superintendents of the several state hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public. (Rev., s. 4620; 1899, c. 1, s. 67; 1923, c. 165, s. 6; 1945, c. 952, s. 56; C. S. 6239.)

Editor's Note.—The 1945 amendment substituted "mental disorder" for "insanity."

§ 122-87. Proceedings in case of recovery of patient charged with crime.—Whenever a person confined in any hospital for the mentally disordered, and against whom an indictment for crime is pending, has recovered or has been restored to normal health and sanity, the superintendent of such hospital shall notify the clerk of the court of the county from which said person was sent, and the clerk will place the case against said person upon the docket of the superior or criminal court of his county for trial, and the person shall not be discharged without an order from said court. In all cases where such person confined in said hospital shall have recovered his mind, the clerk of the court of the county from which he was committed shall fix the amount of bail required for his appearance at the next term of the superior or criminal court of the county for trial, except in cases where the offense charged is a capital felony, and in this case only the judge of the superior court residing within or holding the courts of said district shall have the power to fix bail. If the person confined in the hospital, and reported sane as aforesaid, shall give the bond fixed by the clerk or judge as above provided for, he shall be discharged by the superintendent, and if he does not give the bond, he shall be transferred to the jail of the county from which he was committed. The superintendent will notify the sheriff of said county, and the sheriff will remove the person to the jail of his county. The sheriff will pay the expenses of such removal, and the county of the person's settlement will repay the sheriff for his expenses and services. (Rev., s. 4621; 1899, c. 1, s. 64; 1923, c. 165, s. 7; 1945, c. 952, s. 57; C. S. 6240.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" in the first sentence.

§ 122-88. Ex-convicts with homicidal tendency committed to hospital.—Whenever any person who has been confined in the state prison under sentence for the felonious killing of another person, and who has been discharged therefrom at the expiration of his term of sentence, or as the result of executive clemency, shall thereafter so act as to justify the belief that he is possessed of a homicidal tendency, and shall be duly adjudged mentally disordered, in accordance with the provisions of article three of this chapter, the clerk of the superior court or other officer having jurisdiction of the proceedings in which such person shall be adjudged mentally disordered may, in his discretion, commit such person to the state hospital designated in § 122-83, as authorized and provided in this chapter. (1911, c. 169, s. 1; 1923, c. 165, s. 8; 1945, c. 952, s. 58; C. S. 6241.)

Editor's Note.—The 1945 amendment substituted "tendency" for "mania" and "mentally disordered" for "insane."

§ 122-89. Hospital authorities to receive and treat such patients.—It shall be the duty of the duly constituted authorities of the state hospitals designated in this law for the mentally disordered to receive all such mentally disordered persons as shall be committed to said institutions in accordance with the provisions of this law, and to treat and care properly for the same until discharged in accordance with the provisions of the law. (1911, c. 169, s. 2; 1923, c. 165, s. 9; 1945, c. 952, s. 59; C. S. 6242.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-91. Alleged criminal may be committed for observation.—Any alleged criminal indicted on a felony charge may, on the recommendations of the presiding or resident judge of the superior court, in or out of term, be committed to a state hospital or to some other suitable place for a period of not exceeding thirty days for observation. (1945, c. 952, s. 60; 1951, c. 181.)

Editor's Note.—The 1951 amendment inserted the words "or resident" and "in or out of term".

Art. 7. Camp Butner Hospital.

§ 122-92. Acquisition of Camp Butner Hospital authorized.—The state hospitals board of control is authorized to acquire by purchase, gift or otherwise the Camp Butner Hospital, including buildings, equipment, and land necessary for the operation of a modern up-to-date hospital for the care and treatment of the mentally sick of this state. (1947, c. 789, s. 2.)

Editor's Note.—For another act authorizing the acquisition of Camp Butner and the establishment of an institution similar to the other state hospitals, etc., see Session Laws 1947, c. 537, s. 1 set out in note to § 122-1. As to appropriation, etc., for acquisition and development of Camp Butner Hospital, see Session Laws 1947, c. 789, ss. 1, 3 and 4.

§ 122-93. Disposition of surplus real property.—The North Carolina hospitals board of control is authorized and empowered to sell, lease, rent or otherwise dispose of surplus real property located at Camp Butner, under such rules and regulations as may be adopted jointly by the North Carolina hospitals board of control and the advisory budget commission: Provided, however, that all conveyances of real property shall fully comply with the provisions of article 10, chapter

143 of the General Statutes and in particular §§ 143-146, 143-147, 143-148, 143-149, 143-150, 143-151. (1949, c. 71, s. 1.)

§ 122-94. Application of state highway and motor vehicle laws to roads, etc., at Camp Butner; penalty for violations.—All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the state and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the grounds of Camp Butner. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on said grounds as is now vested by law in the state hospitals board of control. (1949, c. 71, s. 2.)

§ 122-95. Ordinances and regulations for enforcement of article.—The North Carolina hospitals board of control is authorized to make such rules and regulations and to adopt such ordinances, as it may deem necessary, to enforce the provisions of this article and to carry out its true purpose and intent, for the better administration of the Camp Butner Hospital and any adjacent territory owned by it, and in particular may make ordinances and adopt rules and regulations dealing with and controlling the following subjects:

- 1. To regulate the use of streets, alleys, driveways, and to establish parking areas.
- 2. To promote the health, safety, morals and general welfare of those residing on, occupying, renting or using any property or facilities within its limits, and those visiting and patronizing the hospital by:
 - a. Regulating the height, number of stories and size of buildings or other structures, the percentage of lot to be occupied, the size of yards and courts and other open spaces, the density of population, and the location and use of buildings, structures for trade, industry, residence or other purposes, to regulate markets, and prescribe at

what place marketable products may be sold, and to condemn and remove all buildings, or cause them to be removed, at the expense of the owner, when dangerous to life, health or other property.

b. To prohibit, restrict and regulate theatres, carnivals, circuses, shows, parades, exhibitions of showmen and all other public amusements and entertainments and recreations.

c. To regulate, restrict or prohibit the operation of pool and billiard rooms and dance halls.

d. To regulate and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, chickens and other animals and fowl of every description.

e. To prevent and abate nuisances whether on public or private property. (1949, c. 71, s. 3.)

§ 122-96. Recordation of ordinances and regulations; printing and distribution.—All ordinances, rules and regulations adopted pursuant to the authority of this article shall be recorded in the proceedings of the North Carolina hospitals board of control and printed copies shall be filed in the office of the secretary of state, and available for distribution to persons requesting the same. (1949, c. 71, s. 4.)

§ 122-97. Violations made misdemeanor.—Any person, firm or corporation violating any of the provisions of this article, or any ordinance, rule or regulation adopted pursuant thereto, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty days or by both such fine and imprisonment. (1949, c. 71, s. 5.)

§ 122-98. Designation of special police officers.—To enable the North Carolina hospitals board of control to enforce the provisions of this article and any rule or regulation adopted pursuant thereto, the said North Carolina hospitals board of control is authorized to designate one or more special police officers who shall have the same powers as peace officers now vested in sheriffs and constables within the territory embraced by the Camp Butner Hospital site and any adjacent territory thereto owned or leased by the said North Carolina hospitals board of control. (1949, c. 71, s. 6.)

Chapter 125. Libraries.

Art. 1. State Library.

§ 125-1: Repealed by Session Laws 1947, c. 781.

§ 125-2. Trustees; duties and powers.—The governor, superintendent of public instruction, and secretary of state, and their respective successors in office, are appointed trustees of the state and document libraries. The board of trustees may make rules and regulations by which the librarian shall be governed for the protection and preservation of the books and library; and may make such distribution of the books, reports, and publications belonging to the state as in the judgment of the board is advisable and proper. (Rev., s. 5069; Code, s. 3612; 1871-2, c. 169, s. 3; 1903, cc. 104, 133; 1947, c. 781; C. S. 6574.)

Editor's Note.—The 1947 amendment substituted "may" for "shall" in line six.

§§ 125-8, 125-9: Repealed by Session Laws 1947, c. 781.

Art. 2. Document Library.

§ 125-15: Repealed by Session Laws 1947, c. 781.

Art. 3. Library Commission.

§ 125-21. Public libraries to report to commission.—Every public library in the state shall make an annual report to the commission, in such form as may be prescribed by the commission. The term "public library" shall, for the purpose of this article, include free public libraries, subscription libraries, college and university libraries, Young Men's Christian Association, legal association, medical association, supreme court, and state libraries. (1909, c. 873, s. 4; 1949, c. 232, s. 1; C. S. 6600.)

Editor's Note.—The 1949 amendment changed this section

so as to exclude school libraries, it being the stated intent and purpose of the amendment to make it unnecessary for annual reports to be made to the library commission by "school" libraries.

§ 125-26. State policy as to public library service; annual appropriation therefor; library service; administration of fund.

4. For the necessary expenses of administration, allocation and supervision, a sum not to ex-

ceed seven per cent (7%) of the annual appropriation may annually be used by the North Carolina library commission.

(1949, c. 232, s. 2.)

Editor's Note.—The 1949 amendment changed the amount in subsection 4 from five to seven per cent. As the rest of the section was not affected by the amendment it is not set out.

Chapter 126. Merit System Council.

Sec.

126-2. Supervisor of merit examinations; rules and regulations; examinations.

§ 126-1. Appointment of members of merit system council; qualifications; terms; compensation.—The governor of North Carolina is hereby authorized to appoint a merit system council, which shall be composed of five members, all of whom shall be public spirited citizens of this state of recognized standing in the improvement of public administration and in the impartial selection of efficient government personnel for the employment security commission, the North Carolina medical care commission, the state board of health, the state board of charities and public welfare, employees of the North Carolina state hospitals board of control paid in whole or in part from federal funds granted by the surgeon general of the public health service by virtue of the National Mental Health Act, or by any other federal department or agency, and administered by the North Carolina state hospitals board of control as the state mental health authority in the mental health or mental hygiene program, and the state commission for the blind.

(1947, c. 598, s. 1; c. 933, s. 4; 1949, c. 492.)

Editor's Note.—The first 1947 amendment substituted "employment security commission" for "unemployment compensation commission" in the first sentence, and the second 1947 amendment inserted therein the words "the North Carolina medical care commission." The 1949 amendment inserted the provision as to employees of the hospitals board of control. As the rest of the section was not affected by the amendments it is not set out.

§ 126-2. Supervisor of merit examinations; rules and regulations; examinations.—The supervisor of merit examinations appointed under the provisions of article 2 of chapter 143 of the General Statutes, as amended and rewritten by the general assembly of 1949, in cooperation with the merit system council, and with the approval of the state personnel director, the state agencies affected by this chapter, as amended, and the federal security agency or other federal agency or department charged with the administration of the Federal Social Security Laws, shall prepare rules and regulations, job descriptions and specifications, and prepare and give examinations for and to all employees and applicants for employment and/or promotions of the agencies or departments affected by this chapter. Such rules and regulations shall be printed and made available for public inspection and for the use of employees and applicants for employment in said agencies or departments. (1941, c. 378, s. 2; 1949, c. 718, s. 2.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 126-3. Organization of council; meetings; representation of state agencies; duties and pay of supervisor.—The said council shall meet as soon as practicable and organize by electing one of its members as chairman and one who shall act as secretary. The secretary shall keep the minutes of the proceedings of the said council and shall be guardian of all papers pertaining to the business of said council. Meetings of the council shall be held as often as necessary and practicable upon the call of the chairman. The state agencies shall have the right to be represented at all meetings of the council but such representation shall be without voting power. The supervisor of merit examinations, above provided for, shall keep a record of all examinations held, and shall perform such other duties as the council shall prescribe, for which he shall be paid compensation to be fixed by the state personnel director. (1941, c. 378, s. 3; 1949, c. 718, s. 3.)

Editor's Note.—The 1949 amendment substituted "state personnel director" for "director of the budget."

§ 126-15. Application of chapter.—Wherever the provisions of any law of the United States, or of any rule, order or regulation of any federal agency or authority, providing or administering federal funds for use in North Carolina, either directly or indirectly or as a grant-in-aid, or to be matched or otherwise, impose other or higher, civil service or merit standards or different classifications than are required by the provisions of this chapter, then the provisions of such laws, classifications, rules or regulations of the United States or any federal agency may be adopted by the council as rules and regulations of the council and shall govern the class of employment and employees affected thereby, anything in this chapter to the contrary notwithstanding. (1941, c. 378, s. 14; 1947, c. 781.)

Editor's Note.—The 1947 amendment added "s" to the word "State" in line two.

§ 126-16. Effect on certain existing laws.—Nothing in this chapter shall be construed as repealing any of the provisions of article 2 of chapter 143 of the General Statutes, as amended and rewritten by the general assembly of 1949, relating to the state personnel department, nor as relieving the state personnel director and the state personnel council of the duties and responsibilities prescribed therein for the state personnel director and the state personnel council. (1941, c. 378, s. 15; 1949, c. 718, s. 4.)

Editor's Note.—The 1949 amendment rewrote this section.

Chapter 127. Militia.

Art. 11. General Provisions.

Sec.

127-110.1. When officers authorized to administer oaths.

Art. 1. Classification of Militia.

§ 127-1. **Composition of militia.**—The militia of the state shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than seventeen years of age and, except as hereinafter provided, not more than forty-five years of age, and the militia shall be divided into three classes: the national guard, the naval militia, and the unorganized militia. (1917, c. 200, s. 1; 1949, c. 1130, s. 1; C. S. 6701.)

Editor's Note.—The 1949 amendment substituted "seventeen" for "eighteen" in line six.

§ 127-2. **Composition of national guard.**—The national guard shall consist of the regularly enlisted militia between the ages of seventeen and forty-five years, organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years. (1917, c. 200, s. 2; 1949, c. 1130, s. 1; C. S. 6792.)

Editor's Note.—The 1949 amendment substituted "seventeen" for "eighteen" in line three.

§ 127-3. **Composition of naval militia.**—The naval militia shall consist of the regularly enlisted militia between the ages of seventeen and forty-five years, organized, armed, and equipped as hereinafter provided, and commissioned officers between the ages of twenty-one and sixty-two years (naval branch), and twenty-one and sixty-four years (marine corps branch); but enlisted men may continue in the service after the age of forty-five years, and until the age of sixty-two years (naval branch), or sixty-four years (Marine corps branch), provided the service is continuous. (1917, c. 200, s. 3; 1949, c. 1130, s. 1; C. S. 6793.)

Editor's Note.—The 1949 amendment substituted "seventeen" for "eighteen" in line three.

§ 127-4. **Composition of unorganized militia.**—The unorganized militia shall consist of all other able-bodied male citizens of the state and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than seventeen years of age, and, except as otherwise provided by law, not more than forty-five years of age. (1917, c. 200, s. 4; 1949, c. 1130, s. 1; C. S. 6794.)

Editor's Note.—The 1949 amendment substituted "seventeen" for "eighteen" in line five.

Art. 2. General Administrative Officers.

§ 127-12. **Adjutant general.**—The governor shall appoint an adjutant general, which appointment shall carry with it the rank of major general. No person shall be appointed as adjutant general who has had less than five years commissioned service in the national guard, naval militia, regular army, United States navy or marine corps, or organized reserve corps of the United States. The adjutant general, while holding such office, may be a member of the active national guard or naval militia, or organized reserve corps of the

United States. (1917, c. 200, s. 14; 1925, c. 54; 1939, c. 14; 1949, c. 1225; C. S. 6802.)

Editor's Note.—The 1949 amendment rewrote this section.

Art. 3. National Guard.

§ 127-30. **Retirement of officers.**—Retirement of officers shall be regulated so as to conform to federal laws and regulations of the United States relating to retirement of national guard officers. (1917, c. 200, s. 29; 1949, c. 1130, s. 2; C. S. 6819.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 127-42. **Powers of courts-martial.**—All courts-martial of the national guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentences of confinement shall not exceed one day for each dollar of fine authorized. (1917, c. 200, s. 59; 1949, c. 1130, s. 3; C. S. 6829.)

Editor's Note.—The 1949 amendment rewrote this section and omitted the provision relating to confinement in jail.

Art. 7. Pay of Militia.

§ 127-79. **Rate of pay for service.**—The governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted man of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted man shall be paid out of the appropriations made to the adjutant general's department. Such officer and enlisted man shall receive the same pay as officers and enlisted men of the same grade and like service of the regular army or navy; but officers when on duty in connection with examining boards, efficiency boards, advisory boards, and courts of inquiry shall be allowed actual expenses and six dollars (\$6.00) per diem for such duty. Officers serving on general or special courts-martial shall receive the base pay of their rank. No staff officer who receives a salary from the state as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; 1935, c. 451; 1949, c. 1130, s. 4; C. S. 6865.)

Editor's Note.—The 1949 amendment increased the per diem from "four" to "six" dollars.

Art. 8. Privilege of Organized Militia.

§ 127-83. **Leaves of absence for state officers and employees.**—All officers and employees of the state, including superintendents, principals, and teachers in the public schools of the state, who shall be members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, or the naval reserves shall be entitled to leaves of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this chapter or as may be directed by the president of the United States. (1917, c. 200, s. 88; 1937, c. 224, s. 1; 1949, c. 1274; C. S. 6869.)

Editor's Note.—The 1949 amendment inserted the words "including superintendents, principals, and teachers in the public schools of the state."

Art. 10. Support of Militia.

§ 127-102. Allowances made to different organizations.—There shall be allowed each year to the following officers, under rules and regulations prescribed by the adjutant general, as follows: To the commanding general of a division, group and regimental commanders, commanding officers of separate battalions, squadrons, or similar organizations, not to exceed two hundred and twenty-five dollars (\$225.00); to commanding officers of battalions or similar organizations being a part of the regiment, not to exceed one hundred dollars (\$100.00); to commanding officers of companies, batteries, troops, detachments and similar units not to exceed two hundred dollars (\$200.00); to lieutenants serving with units, not to exceed one hundred dollars (\$100.00); to regimental adjutants, plans and training officers, and adjutants of separate battalions, squadrons, and similar organizations, not to exceed one hundred dollars (\$100.00). No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and regulations and has pursued such course of instruction as may from time to time be required.

There shall be allowed annually to each company, battery, troop, and similar organizations federally recognized under regulations prescribed by the war department in its tables of organization for the national guard, not to exceed the sum of one thousand and five hundred dollars (\$1,500.00), to be applied to the payment of armory rent, heat, light, stationery, postage, printing and other necessary expenses of the organization, in accordance with rules and regulations prescribed by the adjutant general.

There shall be allowed annually to the supply sergeant of each Company, Battery, and Troop, and to a petty officer of each division of Naval Militia, Aeronautic Section, and to supply sergeants of similar units, the sum of one hundred dollars. There shall be paid monthly to stable sergeants the sum of fifteen dollars, and to horse-shoers ten dollars, of units entitled to and actually having animals to care for.

Each enlisted man belonging to an organization of the National Guard shall receive fifty cents as compensation for each armory drill, not exceeding sixty (60) drills per annum, ordered for his organization, where he is officially present and in which he participates, the said compensation to be paid in the same manner and under such laws and regulations as now or hereafter may be prescribed by the United States Government or by the War Department therefor for pay for National Guard enlisted men: And provided further, that the appropriation made by the State of North Carolina for the support of the National Guard is sufficient, after the payment of other necessary expenses of maintaining said guard, to make such payment.

All payments are to be made by the State disbursing officer in semiannual installments on the first day of July and the first day of January of each year; but no payment shall be made unless all drills and parades required by law are duly performed by all organizations named. No officer shall be entitled to receive any part of the amounts named herein unless he has performed

satisfactorily all duties required of him by law and has pursued such course of instruction as may from time to time be required.

The commanding officer of all organizations participating in the appropriations herein made shall render an itemized statement of all funds received from any source whatever for the support of their respective organizations in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly when due the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations.

There shall be allowed annually to each of the following federally recognized organizations of the National Guard the sum of four hundred dollars (\$400.00) to be applied by the commanding officers of such organizations to the payment of necessary administrative expenses in accordance with rules and regulations prescribed by the Adjutant General: Commanding officer, corps artillery; commanding officers, infantry regiments, 30th Infantry Divisions; commanding officers, field artillery groups; commanding officers, separate field artillery battalions, 30th Infantry Division; commanding officers, separate AAA AW battalions, 30th Infantry Division; commanding officers, separate nondivisional AAA AW battalions; commanding officers, separate nondivisional field artillery battalions; commanding officers, separate nondivisional military police battalions; commanding officers, separate engineer combat battalions; commanding officers, similar organizations to the above. (1917, c. 200, s. 97; 1919, c. 311; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227, s. 2; 1951, c. 1144, s. 1; C. S. 6889.)

Editor's Note.—The 1949 amendment rewrote the first paragraph and substituted \$1500.00 for \$600.00 in the second paragraph. The 1951 amendment added the last paragraph.

Art. 11. General Provisions.

§ 127-110.1. When officers authorized to administer oaths.—Officers of the national guard are authorized to administer oaths in all circumstances pertaining to any military matter whenever an oath is required. (1949, c. 1130, s. 6.)

Art. 12. State Guard.

§ 127-111. Authority to organize and maintain state guard of North Carolina.

2. Such military force shall be designated as the "North Carolina state guard" and shall be composed of men of the unorganized militia as shall volunteer for service therein, or as shall be drafted as provided by law. Membership in the North Carolina state guard shall be open to men of not less than eighteen and not more than fifty years of age; provided, however, that the members of the band may be composed of men of not less than sixteen and not more than fifty years of age. They shall be additional to and distinct from the national guard organized under existing law. They shall not be required to serve outside the boundaries of this state.

6. The North Carolina state guard shall be subject to the military laws of the state not inconsistent with or contrary to the provisions con-

ained in this article with the following exceptions:

The provisions of §§ 127-84, 127-85 and 127-102, as amended, shall not be applicable to the personnel and units of the state guard.

(1945, c. 290, s. 1; c. 835.)

Editor's Note.—

The first 1945 amendment struck out "9-19" from the list of inapplicable sections in subsection 6, and the second 1945 amendment inserted the proviso in subsection 2. As the other subsections were not affected by the amendments they are not set out.

Chapter 128. Offices and Public Officers.

Art. 3. Retirement System for Counties, Cities and Towns.

Sec.

128-36.1. Participation of employees of regional library.

128-37. Membership of employees of district health departments.

Art. 1. General Provisions.

§ 128-6. Persons admitted to office deemed to hold lawfully.

Cited in *In re Wingler*, 231 N. C. 560, 58 S. E. (2d) 372.

§ 128-7. Officer to hold until successor qualified.

Same—*De Facto*.—

The mayor of a municipality was constituted a special court for the municipality by valid act (Chap. 144, Private Laws of 1913). A duly elected and qualified mayor assumed the duties as judge of the special court under claim of authority. By Chap. 1142, Session Laws of 1949, it was provided that said judge should be appointed by the commissioners of the town, and that he should hold no other office. The town commissioners failed to appoint a judge under the provisions of this act. It was held that a sentence imposed by the mayor acting as judge of the special court cannot be collaterally attacked in habeas corpus since he was at least a judge *de facto* if not *de jure*. In *re Wingler*, 231 N. C. 560, 58 S. E. (2d) 372.

§ 128-9. Peace officers employed by state to give bond.—

Failure to Give Bond Does Not Affect Capacity to Execute Judicial Process.—The fact that law enforcement officers appointed by a board of alcoholic control have not given bond as required by this section does not affect their capacity to execute a search warrant or other judicial process, since the giving of bond is not a condition precedent to the authority of a public officer to perform his duties but is solely for the protection and indemnification of persons who may be damaged by his failure or neglect in the discharge of his duties. *Hinson v. Britt*, 232 N. C. 379, 61 S. E. (2d) 185.

Stated in *Jordan v. Harris*, 225 N. C. 763, 36 S. E. (2d) 270.

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.

Resident Judge without Authority to Indemnify Plaintiffs.

In an action by taxpayers under this section to recover of county commissioners on account of public funds unlawfully expended, etc., plaintiffs disclaiming any right personally to participate in the recovery, it was held that after a recovery by plaintiffs and the entry of a consent judgment dismissing the appeals, wherein no mention was made of indemnifying plaintiffs for their services, the resident judge was without authority to entertain a petition of one of the original taxpayer plaintiffs for such reimbursement. *Hill v. Stansbury*, 224 N. C. 356, 30 S. E. (2d) 150.

Authority of Commissioners to Allow County Treasurer Additional Salary.—In a civil action by taxpayers against

county commissioners and against the treasurer of the county to recover moneys paid to such treasurer in excess of his annual salary as fixed by law, where the evidence tended to show that the county treasurer's salary was fixed at \$1,800 a year in 1927, and that in 1931, agreeable to the Machinery Act of that year (§ 105-271 et seq.), the commissioners designated the county treasurer to receive tax prepayments and for this extra service allowed him \$1,200 per year additional, and again in 1939 allowed him \$240 more per annum, both without legislative authority,

judgment of nonsuit as to the commissioners was properly allowed under the express provisions of this section, there being no evidence of bad faith, etc., while such judgment as to the county treasurer was reversed. *Hill v. Stansbury*, 223 N. C. 193, 25 S. E. (2d) 604.

§ 128-15.1. Section 128-15 applicable to persons serving in present war.—All the provisions for preference rating and preference of employment to citizens who served the state or the United States, honorably in either the army, navy, marine corps or nurses' corps in time of war and to the widows of such veterans and the wives of disabled veterans provided in § 128-15 are hereby specifically made applicable to men and women who have served, are now serving, or shall serve in any branch of the armed services, coast guard and coast guard reserve or the nurses' corps during the present war, and are honorably discharged from such service, and to the widows of such veterans and the wives of disabled veterans of the present war. (1943, c. 168; 1947, c. 412.)

The 1947 amendment made this section applicable to the coast guard and coast guard reserve.

Art. 3. Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

(2) "Employer" shall mean any county or incorporated city or town, or the light and water board or commission of any incorporated city or town, or the board of alcoholic control of any county or incorporated city or town participating in the retirement system. The North Carolina league of municipalities, housing authorities created and operated under and by virtue of chapter 157 of the General Statutes, and the office of the retirement system shall be classed as employers eligible to participate in the retirement system.

(3) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subsection two of this section, including employees of any light and water board or commission, and full-time employees of any housing authority created and operating under and by virtue of chapter 157 of the General Statutes, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. In all cases of doubt the board of trustees shall decide who is an employee.

(6) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the system, certified on his prior service certificate and allowable as provided by § 128-26.

(1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; c. 1015.)

Local Modification.—Session Laws 1945, c. 526, amending §§ 128-21, 128-22, 128-26 through 128-30 and 128-36, provides in section 9 that it shall not apply to the counties of Buncombe, Gates, Granville, Lee, New Hanover, Onslow, Randolph, Rutherford and Vance or to the cities of Henderson and Wilmington. Subsequently Session Laws 1945, cc. 1077, 1086, 1089, 1091 and 1100 made the above amendatory act applicable to Rutherford, Granville, Vance and Buncombe counties, respectively. Session Laws 1945, c. 1100, in effect makes chapter 526 applicable to Randolph county, though its title only purports to make it applicable to the city of Asheboro. Session Laws 1947, c. 15, s. 1, amended Session Laws 1945, c. 526, s. 9, by striking out the reference to the city of Henderson; and Session Laws 1947, c. 943, struck out Lee from the list of counties; and Session Laws 1951, c. 269, struck out Gates from the list of counties. Thus it appears that only the counties of New Hanover and Onslow, and the city of Wilmington, are excepted from the operation of Session Laws 1945, c. 526. For counties excepted from repealing section, see note under §§ 128-37, 128-38.

Editor's Note.—

The 1945 amendment rewrote subsection (6) and the 1947 amendment inserted in subsections (2) and (3) the clauses relating to the light and water board or commission. The first 1949 amendment made subsection (2) applicable to housing authorities and subsection (3) applicable to employees of such housing authorities. The second 1949 amendment inserted in subsection (2) the following "or the board of alcoholic control of any county or incorporated city or town." As the rest of the section was not affected by the amendments it is not set out.

Session Laws 1947, c. 15, s. 2 made this article applicable to the city of Henderson. For act exempting from this article the uniformed employees of the fire department of the city of Charlotte, see Session Laws 1947, c. 926, amended by Session Laws 1949, c. 734, and Session Laws 1951, c. 387.

Discretionary Power to Participate in Retirement System.

—Where a city has become an employer participating in the State Retirement System under authority conferred by this article and by an act amending its charter, the repeal of the charter provision leaves its governing authorities with discretionary power to participate in the retirement system under authority conferred by this article and mandamus will not lie to compel it to withdraw from the State Retirement System. *Laughinghouse v. New Bern*, 232 N. C. 596, 61 S. E. (2d) 802.

§ 128-22. Name and date of establishment.—A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this article for employees of those counties, cities and towns or other eligible employers participating in the said retirement system. Following the filing of the application as provided in § 128-23(3), the board of trustees shall set a date not less than sixty and not more than ninety days thereafter, as of which date participation of the employer may begin, which date shall be known as the date of participation for such employer: Provided, that in the judgment of the board of trustees an adequate number of persons have indicated their intention to participate; otherwise at such later date as the board of trustees may set.

It shall have the power and privileges of a corporation and shall be known as the "North Carolina local government employees' retirement system," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1939, c. 390, s. 2; 1941, c. 357, s. 2; 1943, c. 535; 1945, c. 526, s. 2.)

Local Modification.—Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—

Prior to the 1945 amendment the second sentence provided that the retirement system was operative as of July 1, 1943.

§ 128-23. Acceptance by cities, towns and counties.

(6) Effective July 1, 1951, there shall be two classes of employers, to be designated Class A and Class B, respectively. Each employer whose date of participation occurs on or after July 1, 1951 shall be a Class A employer. Each other employer shall also be a Class A employer: Provided, however, that such employer may, by written notice filed with the board of trustees on or before June 30, 1951, elect to be a Class B employer. (1939, c. 390, s. 3; 1951, c. 274, s. 1.)

Editor's Note.—The 1951 amendment added subsection (6). As the rest of the section was not affected by the amendment it is not set out.

§ 128-24. Membership.—The membership of this retirement system shall be composed as follows:

(1) All employees entering or reentering the service of a participating county, city, or town after the date of participation in the retirement system of such county, city, or town, except that law enforcement officers, as defined in subsection (m) of § 143-166 of the General Statutes, may elect to become members of the law enforcement officers' benefit and retirement fund or the North Carolina local governmental employees' retirement system.

(2) All persons who are employees of a participating county, city, or town except those who shall notify the board of trustees in writing, on or before ninety days following the date of participation in the retirement system by such county, city or town: Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the state of North Carolina or of any political subdivision thereof, shall not be members: Provided, further, that employees of county welfare and health departments whose compensation is derived from federal, state, and local funds may be members of the North Carolina local governmental employees' retirement system to the full extent of their compensation.

(3) Effective July 1, 1951, there shall be two classes of members, to be designated Class A and Class B, respectively. Each member who is an employee of a Class A employer shall be a Class A member, and each member who is an employee of a Class B employer shall be a Class B member. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2.)

Local Modification.—City of Charlotte: 1949, c. 990.

Editor's Note.—The first 1949 amendment added the exception at the end of subsection (1). And the second 1949 amendment rewrote the last proviso.

The 1951 amendment added subsection (3).

Who Excluded from Membership.—The exclusion from membership in the retirement system, as expressed in paragraph 2, will not be interpreted to apply only to those receiving retirement allowances from general funds in state treasury derived from general taxation, but is applicable to those entitled to benefits from any funds coming into the hands of the state treasurer by virtue of a state law. *Gardner v. Board of Trustees*, 226 N. C. 465, 38 S. E. (2d) 314, 316.

Cited in *Hunter v. Board of Trustees*, 224 N. C. 359, 30 S. E. (2d) 384 (con. op.).

§ 128-25. Membership in system.

Cited in *Dillon v. Wentz*, 227 N. C. 117, 41 S. E. (2d) 202.

§ 128-26. Allowance for service.—(1) Under

such rules and regulations as the board of trustees shall adopt each member who was an employee at any time during the year immediately preceding the date of participation of his employer, and who becomes a member during the first year thereafter, shall file a detailed statement of all service as an employee rendered by him to his employer prior to such date of participation for which he claims credit.

(2) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year.

(3) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service, the board of trustees may use for the purpose of this article the compensation rates which if they had progressed with the rates of salary increase shown in the tables as prescribed in subsection fourteen of § 128-28 would have resulted in the same average salary of the member for the five years immediately preceding the date of participation of his employer, as the records show the member actually received.

(4) Upon verification of the statements of service the board of trustees shall issue prior service certificates certifying to each member the length of service rendered prior to the date of participation of his employer, with which he is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificates shall become void. Should the employee again become a member, such employee shall enter the system as an employee not entitled to prior service credit except as provided in § 128-27, subsection five, paragraph (b).

(5) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate.

(6) Effective July 1, 1951, there shall be two classes of prior service certificates, to be designated as Class A and Class B, respectively. Each such certificate issued on account of service rendered to a Class A employer shall be a Class A prior service certificate, and each such certificate issued on account of service rendered to a Class B employer shall be a Class B prior service certificate. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3.)

Local Modification.—Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

3 N. C.—11

Editor's Note.—

The 1945 amendment made changes in subsections (1), (3) and (4).

The 1951 amendment added subsection (6).

§ 128-27. Benefits.—(1) **Service Retirement Benefit.**—(a) Any member in service may retire upon written application to the board of trustees setting forth at which time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, or if a uniformed policeman or fireman he shall have attained the age of fifty-five years, and notwithstanding that, during such period of notification, he may have separated from service.

(b) Any member in service who has attained the age of sixty-five shall be retired at the end of the fiscal year unless the employing board requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the fiscal year.

(c) Any member in service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the fiscal year following the date on which he attains the age of seventy years: Provided, further, that with the approval of the board of trustees and his employer, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(2) **Allowance for Service Retirement.**—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at the age of sixty years or at the actual age at retirement if prior thereto, computed on the basis of contributions made prior to the attainment of age sixty; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty years, or at the actual age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the system been in operation and he contributed thereunder at the rate of five per centum (5%) of his compensation if such certificate is a Class A certificate, or at the rate of four per centum (4%) of his compensation if such certificate is a Class B certificate.

(5) **Reexamination of Beneficiaries Retired on Account of Disability.**—Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trus-

tees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the board of trustees.

(a) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the retirement system.

(b) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the retirement system, and he shall contribute thereafter at the contribution rate in effect for a Class A or Class B member, whichever is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

(8) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of Chapter 128 as they existed at the date of establishment of the retirement system. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the board of trustees may adopt, the provisions of Chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserves between the funds of the retirement system as may be required on account of such adjustments. (1939, c. 390, §. 7; 1945, c. 526, §. 4; 1951, c. 274, ss. 4-6.)

Local Modification.—Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—The 1945 amendment made changes in paragraph (a) of subsection (1) and paragraphs (b) and (c) of subsection (2). The 1951 amendment added that part of paragraph (c) of subsection (2) beginning with the words "at the rate" in line eight. The 1951 amendment also rewrote paragraph (b) of subsection (5) and added subsection (8). As the other subsections were not affected by the amendment they are not set out.

§ 128-28. Administration.—The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in the board of trustees: Provided, that all expenses in connection with the administration of the North Carolina local governmental employees' retirement system shall be charged against and paid from the expense fund as provided in subsection five of § 128-30.

(1) Board of Trustees a Body Politic and Corporate; Powers and Authority; Exemption from Taxation.—The board of trustees shall be a body politic and corporate under the name board of trustees of the North Carolina local governmental employees' retirement system, and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the state or any political subdivision thereof, and shall not be subject to income taxes.

(2) Members of Board.—The board shall consist of the board of trustees of the teachers' and state employees' retirement system and two other persons to be appointed by the governor; one a fulltime executive officer of a city or town participating in the retirement system, and one a fulltime officer of the governing body of a county participating in the retirement system, these to be appointed for a term of two years each. At the expiration of these terms of office, the appointment shall be for a term of four years.

(3) Compensation of Trustees.—The trustees shall be paid seven dollars (\$7.00) per day during sessions of the board and shall be reimbursed from the expense appropriation for all necessary expenses that they may incur through service on the board.

(4) Oath.—Each trustee other than the ex officio members shall, within ten days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the retirement system. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the secretary of state.

(5) Voting Rights.—Each trustee shall be entitled to one vote in the board. Five affirmative

votes shall be necessary for a decision by the trustees at any meeting of said board.

(6) Rules and Regulations.—Subject to the limitations of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business. The board of trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this chapter.

(7) Officers and Other Employees, Salaries and Expenses.—The board of trustees shall elect from its membership a chairman, and shall, by a majority vote of all the members, appoint a secretary, who may be, but need not be, one of its members. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board of trustees, and all other expenses of the board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as the board of trustees shall approve.

(8) Actuarial Data.—The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system, and for checking the experience of the system.

(9) Record of Proceedings; Annual Report.—The board of trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

(10) Legal Adviser.—The attorney general shall be the legal adviser of the board of trustees.

(11) Medical Board.—The board of trustees shall designate a medical board to be composed of three physicians not eligible to participate in the retirement system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(12) Duties of Actuary.—The board of trustees shall designate an actuary who shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

(13) Immediately after the establishment of the retirement system the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the

board of trustees such tables and such rates as are required in subsection fourteen, paragraphs (a) and (b), of this section. The board of trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this chapter.

(14) In the year one thousand nine hundred and forty-five, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the result of such investigation and valuation, the board of trustees shall:

(a) Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary; and

(b) Certify the rates of contributions payable by the participating units on account of new entrants at various ages.

(15) On the basis of such tables as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the system created by this chapter. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7.)

Local Modification.—Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—

The 1945 amendment rewrote this section.

§ 128-29. Management of funds.

(2) Annual Allowance of Regular Interest.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean interest at the rate of four per centum per annum with respect to all calculations and allowances on account of members' contributions and at the rate of three per centum per annum with respect to employers' contributions, with the right reserved to the board of trustees to set a different rate or rates from time to time.

(1945, c. 526, s. 5.)

Local Modification.—Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—

The 1945 amendment rewrote the last sentence of subsection (2). As the other subsections were not changed they are not set out.

§ 128-30. Method of financing.

(1) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payment from the annuity savings fund shall be made as follows:

(a) Prior to July 1, 1951, each participating employer shall cause to be deducted from the

salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. On and after such date the rate so deducted shall be five per centum (5%) in the case of a Class A member, and four per centum (4%) in the case of a Class B member. But the employer shall not have any deduction made for annuity purposes from the compensation of a member who elects not to contribute if he has attained the age of sixty years and has completed thirty-five years of service. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. In determining the amount earnable by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer as to the amount of fees received by such member as compensation during the preceding year, and each month such member shall pay to his employer four per centum of one-twelfth of such compensation received from fees during the previous year, which shall be considered as deductions by the employer as provided in paragraphs (a) and (b) of subsection one of this section.

(3) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the board of trustees, an amount equal to a certain percentage of the earnable compensation of each member, to be known as the "normal contribution" and an additional amount equal to a percentage of his earnable compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation. Until the first valuation for any employer whose participation commenced prior to July 1, 1951, the normal contribution shall be three per cent (3%) for general employees and five per cent (5%) for firemen and policemen, and the accrued liability contribution shall be three per cent (3%) for general employees and six per cent (6%) for firemen and policemen. Until the first valuation for any employer whose participation commenced on or after July 1, 1951, the normal contribution shall be four per cent (4%) for general employees and six and two-thirds per cent (6⅔%) for firemen and policemen, and the accrued liability contribution shall be four per cent (4%) for general employees and eight per cent (8%) for firemen and policemen.

(b) On the basis of regular interest and of

such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this article during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account and for the pro rata share of the cost of administration of the retirement system. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(c) The "accrued liability contribution" shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who are entitled to prior service certificates, and shall be paid for a period of approximately thirty years, provided that the length of the period of payment for each employer after contributions begin shall be the same for all employers and shall be determined by the board of trustees as the result of actuarial valuations.

(d) At the end of the first year following the date of participation for each employer, the accrued liability payable by such employer shall be set, by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the system who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the "accrued liability contribution" rate for such employer shall be the per centum of the total annual compensation of all members employed by such employer which is equivalent to four per centum of the amount of such accrued liability. The expense of making such actuarial valuation to determine the accrued liability contribution for each employer shall be paid by such employer. The accrued liability contribution rate shall be increased on the basis of subsequent valuation if benefits are increased over those included in the valuations on the basis of which the original accrued liability contribution rate was determined.

(e) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year: Provided, however, that the amount of each an-

nual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.

(f) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members.

(g) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.

(h) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(1945, c. 526, s. 6; 1951, c. 274, ss. 7-9.)

Local Modification.—Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—The 1945 amendment made changes in paragraphs (a), (c) and (d) of subsection (3). The 1951 amendment rewrote the first sentence of paragraph (a) of subsection (1), made changes in the latter part of paragraph (a) of subsection (3) and added the last sentence of paragraph (d) of subsection (3). Only the paragraphs affected by the amendment are set out.

§ 128-36. Local laws unaffected; when benefits begin to accrue.—Nothing in this article shall have the effect of repealing any Public-Local or Private Act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town or prohibiting the enactment of any Public-Local or Private Act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town. No payment on account of any benefit granted under the provisions of § 128-27, subsections one to four inclusive, shall become effective or begin to accrue until the end of one year following the date the system is established nor shall any compulsory retirement be made during that period. The provisions of this article shall apply only to those counties, cities or towns whose governing authorities voluntarily elect to be bound by same. (1939, c. 390, s. 16; 1941, c. 357, s. 9B; 1945, c. 526, s. 7A.)

Local Modification.—Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—The 1945 amendment rewrote the last sentence.

§ 128-36.1. Participation of employees of regional library.—Under such rules and regulations as the board of trustees shall establish and promulgate, the boards of county commissioners of any group of counties operating a regional library may elect that employees of such library may be members of the North Carolina local governmental employees' retirement system to the extent of that part of their compensation paid by the various counties operating said regional library. (1949, c. 923.)

§ 128-37. Membership of employees of district health departments.—Under such rules and regulations as the board of trustees shall establish and promulgate, the boards of county commissioners of any group of counties composing a district health department, or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health, may elect that employees of such health departments may be members of the North Carolina local governmental employees' retirement system to the extent of that part of their compensation paid by the various counties composing said district health department. (1949, c. 1012; 1951, c. 700.)

Editor's Note.—Former § 128-37 was repealed by Session Laws 1945, c. 526, s. 8. See note to repealed § 128-38.

The 1951 amendment inserted after the word "department" in line five the words "or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health". It also substituted "health departments" for "district health department".

§ 128-38: Repealed by Session Laws 1945, c. 526, s. 8.

Art. 4. Leaves of Absence.

§ 128-39. Leaves of absence for state officials.

Under this section any state official may be given a leave of absence to accept a temporary officer's commission in the United States Army or Navy, as prescribed in this section, without perforce vacating his civil office and without violation of the provisions of N. C. Constitution, Art. XIV, sec. 7. In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567.

Where a judge of a superior court has been granted leave of absence under provisions of this section, his acceptance of appointment as judge of United States Zonal Court in Germany would contravene the provisions of the constitution, art. XIV, § 7 and ipso facto create a vacancy in his office. In re Advisory Opinion, 226 N. C. 772, 39 S. E. (2d) 217.

§ 128-40. Leaves of absence for county officials.
Cited in In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567.

§ 128-41. Leaves of absence for municipal officers.
Cited in In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567.

Chapter 129. Public Buildings and Grounds.

Sec. 129-13. Program for location and construction of future public buildings.

§ 129-13. Program for location and construction of future public buildings.—The State Board of Buildings and Grounds is hereby authorized, empowered and directed to formulate a long range building policy program and shall co-operate

with the governing board of the city of Raleigh in zoning property adjacent to or in the vicinity of the Capitol Square when and if the city of Raleigh desires to zone said property. If the State Board of Buildings and Grounds feels that property adjacent to or in the vicinity of the Capitol Square will, in the future, be needed for State building purposes it shall so advise the

governing board of the city of Raleigh, and at such times as the governing body of the city of Raleigh shall rezone property adjacent to or within four blocks of the State Capitol, it shall request an opinion from the State Board of Buildings and Grounds as to whether the State Board of Buildings and Grounds finds a future need for such property for State building purposes. In the event that the governing board of the city of

Raleigh is informed by the Board of Public Buildings and Grounds that any property herein covered be needed for building purposes by the State in the future, the governing body of the city of Raleigh shall give full consideration to such opinion of the Board of Buildings and Grounds before making any rezoning order. (1951, c. 1132.)

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SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW.

Art. 1. State Board of Health.

§ 130-1. Membership of board.—The North Carolina board of health shall consist of nine members, four of which members shall be elected by the Medical Society of the State of North Carolina and five of which members shall be appointed by the governor. One of the members appointed by the governor shall be a licensed pharmacist and one a reputable dairyman. (Rev., s. 4435; Code, s. 2875; 1879, c. 177, s. 1; 1885, c. 237, s. 1; 1893, c. 214, s. 1; 1911, c. 62, s. 1; 1931, c. 177, s. 1; 1945, cc. 281, 1095; C. S. 7048.)

Editor's Note.—The first 1945 amendment, as changed by the second 1945 amendment, added the second sentence.

Art. 3. County Organization.

§ 130-18. County board of health; organization; terms of members; chairman.—1. All counties having a separate health department shall organize and operate a county board of health composed of three ex-officio members, the same being the chairman of the board of county commissioners, mayor of the city or town which is the county seat (if there is no such mayor, then the clerk of the superior court of the county), and the county superintendent of public instruction; these ex-officio members shall hold an annual election meeting the first week in January in each year for the purpose of electing or appointing public members; the public members shall be four in number, one of whom shall be a dentist, one a physician, one a registered pharmacist, and the other one shall be a public spirited citizen. Where either of the three specified public members, namely a physician, or a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, this place shall be filled with a public spirited citizen. The first meeting of the ex-officio members for the election or appointment of public members shall be in the first week in January, one thousand nine hundred and forty-six, and at this meeting one of the public members shall be elected or appointed for a period of four years, one for three years, one for two years, and one for one year; thereafter one member shall be elected each year for a term of four years; in cases where more than one city or town participates by law in the financial support of the health department, the mayor of such participating city or town shall be an ex-officio member of the board of health; in any instance the ex-officio members shall elect the four public members as provided above; the board shall elect its own chairman, who shall not have the right to vote except in case of a tie; any four members of the board shall constitute a quorum and the county health officer shall act as secretary to such board of health; provided, that those counties which now have special city-county boards of health, as authorized by any private, local, or public-local act of the general assembly, for the purpose of carrying on a joint health program shall be exempted from the terms of this section, unless the special city-county board of health shall vote by a two-thirds majority of all members to dissolve said special board of health, and shall so notify the state health officer, in writing, in which event the provisions of this paragraph shall apply.

(a) All vacancies in membership of the public members of a county board of health shall be filled by the county board of health at its next regular meeting following the creation of the vacancy. In case any public member appointed to fill a vacancy is a public official or officer, his duties as a member of said county board of health shall be deemed to be ex officio. Provided that in the several counties of North Carolina wherein the public members of their respective county boards of health have not, prior to the effective date of this proviso, been appointed or elected for staggered terms as hereinbefore provided by this section, the ex-officio members of all such county boards of health shall at a meeting to be called and held by the chairman of the board of county

commissioners in each such county for such purpose, within 30 days from the effective date of this proviso, elect the public members of such county boards of health as follows: One of the public members of such board or boards of health shall be elected or appointed for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year; thereafter, one public member shall be elected during the month of January of each succeeding year for a term of four years, and the public members elected, appointed, or re-elected, or re-appointed pursuant to this proviso shall in all other respects be subject to all of the other provisions of Article 3 of Chapter 130 of the General Statutes. The present public members of any and all such county boards of health shall be eligible for re-election or re-appointment as members of such county board or boards of health for the terms provided herein.

2. The rules, regulations and ordinances of the county board of health shall apply to municipalities within the county but the board of health shall not have the power to pass special ordinances covering a municipality only, such authority being implicit in and retained by the governing body of the municipality. The duties and the responsibilities of the county board of health shall be as set forth in § 130-19 except as may be modified by the provisions of this section. (Rev., s. 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; C. S. 7064.)

Editor's Note.—

The first 1945 amendment added a pharmacist to the county board of health, and the second 1945 amendment rewrote the section.

The 1947 amendment added paragraph (a) of subsection 1.

The 1951 amendment which added the proviso at the end of paragraph (a) under subsection 1, became effective February 23, 1951.

Cited in *Roberts v. McDevitt*, 231 N. C. 458, 57 S. E. (2d) 655.

§ 130-21. To elect county physician and health officer.—The county board of health shall elect a health officer meeting the qualifications set forth by the merit system council and subject to the provisions of chapter one hundred and twenty-six of the General Statutes. The term of office of the county health officer shall be at the pleasure of the county board of health. Emergency and temporary appointments may be made when necessary with the approval of the state health officer. When, in the case of a vacancy, the county board of health fails to elect a health officer within sixty days after receiving notification from the state health officer that a vacancy exists, it shall be the duty of the state health officer to appoint a health officer for the county. The county health officer may also be the county physician. Election of a county physician in counties having a county board of health shall be by such board. Such election shall take place during January of the odd years of the calendar for a two-year term. The salary of the county physician shall be paid by the board of county commissioners at such time and in such sum or amount as may be mutually agreed upon between the board of county commissioners and county physicians. The members of the county board of health while on duty

shall receive a per diem of four dollars (\$4.00). (Rev., ss. 4444, 4446; 1897, c. 201, s. 1; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1913, c. 181, s. 1; 1915, cc. 214, 233; 1945, c. 1030, s. 3; C. S. 7067.)

Editor's Note.—The 1945 amendment rewrote this section.

Art. 6. Sanitary Districts in General.

§ 130-33. Creation by state board of health.

Cited in *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378.

§ 130-35. State board of health to hold public hearing.—The State Board of Health or the Secretary and State Health Officer shall name a time and place within the proposed district at which the State Board of Health, through a representative, shall hold a public hearing concerning the creation of the proposed sanitary district. The State Board of Health or the Secretary and State Health Officer shall cause at least twenty days' notice to be given of the time and place of such hearing by publishing this information at least five times in a newspaper or newspapers published in or near the proposed district and having a general circulation therein. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, any such hearing may be continued at a time and place named by the representative of the State Board of Health. (1927, c. 100, s. 4; 1951, c. 178, s. 1.)

Editor's Note.—The 1951 amendment inserted the words "or the Secretary and State Health Officer" in the first and second sentences.

§ 130-37. Election and terms of office of sanitary district boards.

Editor's Note.—

The second historical citation to this section in original should be "1943, c. 602."

§ 130-39. Corporate powers.

10. After adoption of a plan as provided in § 130-44, the sanitary district board may, in its discretion, alter or modify such plan if, in the opinion of the state board of health, such alteration or modification does not constitute a material deviation from the objective of such plan. Such alteration or modification may provide among other things for the construction of a water line for the supply of any person, firm, corporation, city, town, village or political subdivision of the state either within and/or without the corporate limits of the district instead of a sewage disposal line and other improvements, where such alteration or modification would permit the disposal of sewage at a point nearer the district either within and/or without the corporate limits, thereby contaminating the prevailing water supply of the person, firm, corporation, city, town, village or political subdivision of the state to whom the water is to be supplied and would effect a saving to the district, and the sanitary district board may appropriate or reappropriate money of the district for carrying out such plan as altered or modified.

15. To use the income of the district, and if necessary, to cause taxes to be levied and collected upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection in said district, all as provided in this article.

16. To establish a capital reserve fund for the

district in accordance with the following provisions:

(a) The district board shall pass a resolution declaring that a capital reserve fund is thereby established, which resolution shall state that said fund shall consist of unencumbered balances and unappropriated surplus revenues evidenced by money derived from collections of ad valorem taxes of the district and/or from service charges and rates applied by the district board in accordance with law and/or from proceeds of the sale of real or personal property of the district, that it shall take effect when the provisions thereof are approved by the local government commission, and the district board shall designate therein some bank or trust company as depository in which the capital reserve fund shall be placed to the credit of a special account to be known as "_____ District, Capital Reserve Fund."

(b) Upon adoption of a resolution by the district board providing therefor and with the approval of the local government commission, the capital reserve fund may be increased at any time with money from like source or sources as those stated in the establishing resolution.

(c) Withdrawal from the capital reserve fund shall be of two kinds, temporary and permanent. Temporary withdrawal may be made (1) in anticipation of the collections of taxes and other revenues of the district of the current fiscal year in which such withdrawal is made and for the purpose of paying principal and/or interest of bonds of the district falling due within three months, but the amount of such withdrawal shall be repayable to the capital reserve fund not later than thirty days after the close of the fiscal year in which such withdrawal is made, and (2) for investment or reinvestment in bonds, notes or certificates of indebtedness of the United States of America, in bonds or notes of the state of North Carolina, in bonds of the district, or in bonds of any city, town or county in North Carolina. Permanent withdrawal may be made for the purpose of acquiring property for the district by purchase or otherwise, or for extending, enlarging, improving, replacing or reconstructing any properties of the district incident to or deemed necessary for the exercise of the powers granted by law to the district board. Each withdrawal shall be authorized by resolution of the district board and approved by the local government commission and shall be by check drawn on the designated depository of the capital reserve fund upon which such approval by the commission shall be endorsed by the secretary of the commission or by an assistant designated by him for that purpose: Provided, however, the state of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such endorsement, such endorsement only being prima facie evidence of approval of the withdrawal authorized. No permanent withdrawal shall be made unless, after such withdrawal, there shall remain in the capital reserve fund an amount equal to the sum of the principal and interest of bonds of the district maturing either in the fiscal year in which the withdrawal is made or in the ensuing fiscal year, whichever is greater.

(d) All moneys stated in the establishing reso-

lution or in a resolution providing for increase of the capital reserve fund, when the provisions of such resolutions are approved by the local government commission, and all realizations and earnings from temporary withdrawals shall be deposited in the designated depository of the capital reserve fund by the officer or officers having the charge and custody of such moneys, and it shall be the duty of such officer or officers to simultaneously report each of such deposits to the local government commission.

17. To make rules and regulations in the interest of and for the promotion and protection of the public health and the welfare of the people within the sanitary district, and for such purposes to possess the following powers:

(a) To require any person, firm or corporation owning, occupying or controlling improved real property within the district to connect with either, or both, the water or sewage systems of the district. This subsection shall be inapplicable unless the health of the people residing within the district is endangered or jeopardized by the failure to connect to either, or both, of said water or sewage systems.

(b) To require any person, firm or corporation owning, occupying or controlling improved real property within the district where the water or sewage systems of the district are not immediately available or it is impractical to connect therewith to install sanitary toilets, septic tanks and other health equipment or installations.

(c) To require any person, firm or corporation to abate any nuisance detrimental or injurious to the public health of the district.

(d) To abolish, regulate and control the use and occupancy of all pig sties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless such 500 feet to be within the corporate limits of some city or town.

(e) That upon the non-compliance by any person, firm or corporation of any rule and regulation promulgated and enacted hereunder, the district sanitary board shall cause to be served upon the person, firm or corporation who fails to so comply a notice setting forth the rule and regulation and wherein the same is being violated, and such person, firm or corporation shall have at least thirty days from the service of such notice in which to comply with such rule and regulation. The sanitary district board is authorized to grant, in its discretion, additional time for compliance.

(f) Upon failure to comply with such rule and regulation within thirty days as directed in said notice or within the time extended by the sanitary district board, such person, firm or corporation shall be guilty of a misdemeanor and fined and imprisoned in the discretion of the court.

(g) The sanitary district board is authorized to enforce the rules and regulations enacted or promulgated hereunder by criminal action or civil action, including injunctive relief.

18. For the purpose of promoting the public health, safety, morals, and the general welfare of the state, the sanitary district boards of the various sanitary districts of the state are hereby empowered, within the areas of said districts and not under the control of the United States or the

state of North Carolina or any agency or instrumentality thereof, to designate, make, establish and constitute as zoning units any portions of said sanitary districts in accordance with the manner, method and procedure as follows:

(a) No sanitary district board, under the provisions of this subsection, shall designate, make, establish and constitute any area in their respective sanitary districts a zoning area until a petition signed by two-thirds (2/3) of the qualified voters in said area as shown by the registration books used in the last general election, together with a petition signed by two-thirds (2/3) of the owners of the real property in said area as shown by the records in the office of the register of deeds for the county on the date said petition is filed with any sanitary district board, and a public hearing after twenty days' notice has been given. Such notice must be published in a newspaper of general circulation in said county at least two times, and a copy of said notice posted at the courthouse of said county and in three other public places in the sanitary district for twenty days before the date of the hearing. The petition must be accompanied by a map of any proposed zoning area.

(b) When any portion of any sanitary district has been made, established and constituted a zoning area, as herein provided, the sanitary district boards as to any such zoning areas shall have, exercise and perform all of the rights, privileges, powers and duties granted to municipal corporations under article 14, chapter 160, of the General Statutes of North Carolina, as amended, provided, however, the sanitary district boards shall not be required to appoint any zoning commission or board of adjustment, and upon the failure to appoint either said sanitary district boards shall have, exercise and perform all the rights, privileges, powers and duties granted to said zoning commission and board of adjustment.

(c) The governing body of any city, town or sanitary district is hereby authorized to enter into agreements with any other city, town or sanitary district for the establishment of a joint zoning commission, and to co-operate fully with each other.

(d) The sanitary district boards are hereby authorized to appropriate such amounts of money as they deem necessary to carry out the effective provisions of this subsection, and are authorized to enforce its rules and regulations in order to give effect to this subsection, and for such purposes to use the income of the district or cause taxes to be levied and collected upon the taxable property within the district to pay such costs.

(e) None of the provisions of chapter 176 of the Public Laws of North Carolina, Session 1931 (the proviso to § 160-173), shall apply to any sanitary district.

(f) This subsection shall apply only to sanitary districts which adjoin and are contiguous to cities having a population of fifty thousand or more. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; cc. 1133, 1145; 1951, c. 17, s. 1; c. 1035, s. 1.)

Local Modification.—Caswell: 1945, c. 20; Rockingham: 1947, cc. 565, 849.

Editor's Note.—

The 1945 amendment added subsection 16 and inserted a

reference thereto in the former last paragraph of the section which formerly followed subsection 15. The 1947 amendment struck out said paragraph. The first 1949 amendment rewrote subsection 10, and the other 1949 amendments added subsections 17 and 18. The first 1951 amendment made the same changes as the first 1949 amendment, which had not been constitutionally adopted. The second 1951 amendment rewrote subdivision (a) of subsection 17. As the rest of the section was not changed only subsections 10 and 15 through 18 are set out.

Services and Rates Not Subject to Control of Utilities Commission.—A sanitary district which, as a part of its functions, furnishes drinking water to the public and also filtered water for industrial consumers is a quasi-municipal corporation, and is not under the control and supervision of the North Carolina Utilities Commission as to services or rates. *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378.

Lease of Filter Plant.—Defendant sanitary district was unable to raise funds for the construction of a filter plant and, in order to carry out the purposes for which it was created, leased a cotton mill's filter plant under an agreement that the mill should get its water at cost of filtering and should have priority over other industrial consumers. It was held that the lease contract was in the public interest and the district had authority to execute it, and the contract was valid since it did not impair the ability of the district to discharge its duties to the public nor unlawfully discriminate between commercial customers similarly circumstanced. *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378.

Under the facts of the preceding paragraph, the district agreed with plaintiff paper mill to furnish it water from the surplus remaining after the needs of the district and lessor enterprise had been satisfied. It was held that upon increased demand by the lessor, resulting in a diminution of the surplus available for sale to other industrial consumers, the district had the power to reduce the amount of water furnished the paper mill proportionately, since the paper mill had no right to any water except out of surplus water remaining after the requirements of the district and the lessor enterprise had been satisfied, and since there was no discrimination in service to commercial users similarly circumstanced in regard to such surplus. *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378.

§ 130-44. Consideration of reports and adoption of a plan.—The report or reports filed by the engineers pursuant to § 130-43 shall be given careful consideration by the sanitary district board, and said board shall adopt a plan, but before adopting such plan said board may, in its discretion, hold a public hearing, giving due notice of the time and place thereof, for the purpose of considering objections to such plan. The plan adopted as aforesaid shall be submitted by the sanitary district board to the state board of health and shall not become effective unless and until it is approved by the state board of health.

The provisions of this section and of § 130-43 shall apply when it shall have been determined by the sanitary district board that consummation of the plan is predicated upon the issuance of bonds of the district, except that they shall not apply in a proposed purchase of fire-fighting equipment and apparatus. Failure to observe or comply with said provisions shall not, however, affect the validity of any bonds of a sanitary district which may be hereafter issued pursuant to this article. (1927, c. 100, s. 12; 1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note.—The 1951 amendment rewrote this section and made the same changes as the 1949 amendment which had not been constitutionally adopted.

§ 130-45. Resolution authorizing bond issue and purposes for which bonds may be issued.—Either before or after the adoption of the plan as aforesaid, the sanitary district board may pass a resolution or resolutions (hereinafter sometimes referred to as "bond resolution" or "bond resolu-

tions") authorizing the issuance of bonds of the sanitary district, but bonds for two or more unrelated purposes shall not be authorized by the same bond resolution; provided, however, that bonds for two or more improvements or properties mentioned together in any one or more of the clauses of this section may be treated as being but for one purpose and may be authorized by the same bond resolution. The negotiable bonds of a sanitary district may be issued for any one or more of the following purposes, which purposes may include land, rights in land or other rights necessary for the establishment thereof:

(a) Acquisition, construction, reconstruction, enlargement of, additions or extensions to a water system or systems, a water purification or treatment plant or plants, a sanitary sewer system or systems, or a sewage treatment plant or plants, including interest on the bonds during construction and for one year after completion of construction if deemed advisable by the sanitary district board.

(b) Construction, reconstruction or acquisition of an incinerator or incinerators or other facilities for the disposal of garbage, waste and other refuse.

(c) Purchase of fire-fighting equipment and apparatus.

Such resolution shall state,

1. In brief and general terms, the purpose for which the bonds are to be issued.

2. The maximum aggregate principal amount of the bonds.

3. That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected on all taxable property within the sanitary district.

4. That the resolution shall take effect when and if it is approved by the voters of the sanitary district at an election.

Such resolution shall be published once a week for three successive weeks: Provided, however, the first of such publications shall be not later than the first publication of the notice of election required in § 130-46. A statement in substantially the following form (the blanks being first properly filled in), with the printed signature of the secretary of the sanitary district board appended thereto, shall be published with the resolution:

The foregoing resolution was adopted by the sanitary district board of Sanitary District on the day of, 19...., and was first published on the day of, 19.... Any action or proceeding questioning the validity of said resolution must be commenced within thirty days after its first publication.

.....
Secretary, Sanitary District Board.

(1927, c. 100, s. 13; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1951, c. 846, s. 1.)

Editor's Note.—The first 1951 amendment rewrote this section and made the same changes as the 1949 amendment which had not been constitutionally adopted. The second 1951 amendment rewrote the first paragraph and subsection (a).

§ 130-45.1. Limitation of action to set aside a bond resolution.—Any action or proceeding in any court to set aside a bond resolution adopted

pursuant to this article, or to obtain any other relief upon the ground that such resolution is invalid, must be commenced within thirty days after the first publication thereof as provided in § 130-45. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution shall be asserted, nor shall the validity of such resolution be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note.—The 1951 act inserted this section in the exact language of the 1949 act, which had not been constitutionally adopted.

§ 130-45.2. Publication of resolution, notice and statement.—A resolution or notice or statement required by this article to be published shall be published in a newspaper published in the county in which the district lies or if the district lies in two or more counties, in a newspaper published in each such county, or if there is no newspaper published in a county in which the whole or a part of the district lies, then and in lieu of a newspaper published in such county in a newspaper which, in the opinion of the sanitary district board, has general circulation within the district. (1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note.—The 1951 act inserted this section in the exact language of the 1949 act, which had not been constitutionally adopted.

§ 130-46. Call for election.—Following the adoption of a bond resolution by the sanitary district board the said board shall call upon the board or boards of county commissioners in the county or counties in which the district or any portion thereof is located to name election officers, set date, name polling places, and cause to be held an election within the district on the proposition of issuing bonds as set forth in such bond resolution. If, at such election a majority of the registered voters who shall vote thereon at such election shall vote in favor of the proposition submitted, the bonds set forth in the bond resolution may be advertised, sold and issued in the manner provided by law. Should the proposition of issuing bonds submitted at any election as provided under this article fail to receive the required number of votes, the sanitary district board may, at any time after the expiration of six months, cause another election to be held for the same objects and purposes or for any other objects and purposes. The expenses of holding bond elections shall be paid from the funds of the sanitary district.

The board of commissioners of the county in which said sanitary district is located, if wholly located in a single county, may in their discretion at any special election held under the provisions of this article make the whole sanitary district a voting precinct, or may create therein one or more voting precincts as to them seems best to suit the convenience of voters, the said precinct not to be the general election precinct unless the boundaries of the sanitary district are co-terminal with one or more whole general election precincts. If said sanitary district is located in more than one county, the election precincts therein shall be fixed by the board of the particular county in which the portion of the sanitary district is located.

The said board or boards of commissioners shall provide registration and polling books for each precinct in the sanitary district, the cost of the same to be paid from the funds of the sanitary district. The notice of the election shall be given by publication once a week for three successive weeks. It shall set forth the boundary lines of the district and the amount of bonds proposed to be issued. The first publication shall be at least thirty days before the election. At the first election after the organization of the sanitary district, a new registration of the qualified voters within the same shall be ordered and notice of such new registration shall be deemed to be sufficiently given if given by publication once in some newspaper published or circulated in said district at least thirty days before the close of the registration books. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in municipal elections as provided in § 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters and place or places on which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in said election, which ballot may contain the words "For approval of the bond resolution adopted by the sanitary district board of Sanitary District on the day of, 19...., authorizing the issuance of not exceeding \$..... of bonds of said sanitary district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," and the words "Against approval of the bond resolution adopted by the sanitary district board of Sanitary District on the day of, 19...., authorizing the issuance of not exceeding \$..... of bonds of said sanitary district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," with squares opposite said affirmative and negative forms of the proposition submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed. Two or more bond resolutions adopted by the sanitary district board, each for a separate purpose as provided in § 130-45, may be submitted at the same election and each may be stated on the same ballot as a separate proposition. After the election and after the vote has been counted, canvassed and returned to the board or boards of county commissioners, the election books shall be deposited in the office of the clerk of the superior court as polling books for the particular sanitary district involved. At any subsequent election, whether upon the recall of an officer as provided in § 130-53 or for an additional bond issue in the particular district, a new registration may or may not be ordered as may be determined by the board of county commissioners interested in said election.

A statement of results of an election on the proposition of issuance of bonds showing the date of such election, the proposition submitted, the number of voters who voted for the proposition and declaring the result of the election shall be prepared and signed by a majority of the members of the sanitary district board and deposited with the clerk of the superior court of the county in which the district lies, or, if parts of the district lie in two or more counties, with the clerk of the superior court of each such county. Such statement shall be published once. No right of action or defense founded upon the invalidity of such election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement. (1927, c. 100, s. 14; 1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note.—The 1951 amendment made changes in the first paragraph, rewrote the second sentence of the third paragraph and added the last paragraph. It also struck out the first sentence of the fourth paragraph and inserted in lieu thereof the present first two sentences. The same changes had been made by the 1949 amendment, which was not adopted in accordance with the applicable provisions of the constitution. For a brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 130-47. Bonds.—The sanitary district board shall, subject to the provisions of this article, and under competent legal and financial advice prescribe by resolution the form of the bonds, including any interest coupons to be attached thereto, and shall fix the date, the maturities, the denomination or denominations, and the place or places of payment of principal and interest which may be at any bank or trust company within or without the State of North Carolina. The bonds shall not be sold at less than par and accrued interest nor bear interest at a rate or rates in excess of six per centum (6%) per annum. The bonds shall be signed by the chairman and secretary of the sanitary district board, and the seal of the board shall be impressed thereon, and any coupons attached thereto shall bear a facsimile of the signature of the secretary of said board in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the board occurring after the signing and sealing of the bonds. Bonds issued under this article shall be payable to bearer unless they are registered as hereinafter provided, and each coupon appertaining to a bond shall be payable to the bearer of the coupon. A sanitary district may keep in the office of the secretary of the sanitary district board, or in the office of a bank or trust company appointed by said board as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue or, at the request of the holder, thereafter. After such registration, the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registration by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered

owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. A sanitary district may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. Upon the registration of a coupon bond as to both principal and interest the bond registrar shall also cut off and cancel the coupons, and endorse upon the back of such bond a statement that such coupons have been cancelled. The proceeds from the sale of such bonds shall be placed in a bank in the state of North Carolina to the credit of the sanitary district board, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the sanitary district board. The officer or officers having charge or custody of funds of the district shall require said bank to furnish security for the protection of deposits of the district as provided in § 159-28.

Bonds issued for any purpose pursuant to this article shall mature within the period of years as hereinafter provided, each such period being computed from the date of the election upon the issuance thereof held under the provisions of § 130-46. Such periods shall be for the purposes stated by clauses in § 130-45 as follows: clause (a), forty years; clause (b), twenty years; clause (c), ten years. Such bonds shall mature in annual installments or series, the first of which shall be made payable not more than five years after the date of the first issued bonds of such issue, and the last within the aforesaid period. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of any issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. Such bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. Bonds issued pursuant to this article shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1927, c. 100, s. 15; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1951, c. 846, s. 2.)

Editor's Note.—The first 1951 amendment rewrote the part of the first paragraph now constituting the last sentence thereof. It also added the second paragraph. The same changes had been made by the 1949 amendment, which was not adopted in accordance with the applicable provisions of the constitution. The second 1951 amendment rewrote all of the first paragraph except the last two sentences.

§ 130-48. Additional bonds.—Whenever the proceeds from the sale of bonds issued by any district as in this article authorized shall have been expended or contracted to be expended and the sanitary district board shall determine that the interest or necessity of the district demands that additional bonds are necessary for carrying out any of the objects of the district, the board may again proceed as in this article provided to have an election held for the issuance of such additional

bonds and the issue and sale of such bonds and the expenditure of the proceeds therefrom shall be carried out as hereinbefore provided. In the event the proceeds of the sale of the bonds shall be in excess of the amount necessary for the purpose for which they were issued, such excess shall be applied to the payment of principal and interest of said bonds. (1927, c. 100, s. 16; 1933, c. 8, s. 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note.—The 1951 amendment rewrote the last sentence. The same change had been made by the 1949 amendment, which was not adopted in accordance with the applicable provisions of the constitution.

§ 130-49. Valuation of property; determining annual revenue needed.

The sanitary district board shall determine the number of cents per \$100 necessary to raise the said amount and so certify to the board or boards of county commissioners. The board or boards of county commissioners in their next annual levy shall include the number of cents per \$100 so certified by the sanitary district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected and every ninety days the amount of tax so collected shall be remitted to the sanitary district board and deposited by said board in a bank in the state of North Carolina separately from other funds of the district. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in § 159-28.

(1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note.—The 1951 amendment rewrote the last sentence of the second paragraph. The same change had been made by the 1949 amendment which was not constitutionally adopted. As the first and third paragraphs were not changed they are not set out.

§ 130-56. Procedure for extension of district.

—The boundaries of any sanitary district may, with the approval of the sanitary district board, be extended under the same procedure as herein provided for the creation of a sanitary district: Provided, however, that twenty-five per cent or more of the resident freeholders within the territory proposed to be annexed institute by petition the proceedings for annexation, or that ten per cent of the freeholders resident in the district to be annexed are authorized to petition for an election upon the subject of annexation, and if such petition is filed with the sanitary district board, such election shall be held within the territory to be annexed under the rules and regulations hereinbefore provided. However, if the owners of all of the real property in the territory to be annexed petition any sanitary district board to include such real property within the boundaries of said district, then and in that event no election shall be necessary and such sanitary district board is authorized and empowered to enlarge its boundaries so as to include such property in the district upon the approval of its actions by the board of county commissioners of any county or counties within which said sanitary district lies, and with the further approval of the state board of health.

In any case where the boundaries of a sanitary district shall have been extended and the proposition of issuing bonds of the district as enlarged shall not be approved by the voters at an election held within one year subsequent to such

extension, 51% or more of the resident freeholders within the territory so annexed may, with the approval of the sanitary district board, petition the board of commissioners of the county in which the annexed territory is located, that the territory so annexed be disconnected and excluded from such sanitary district. Upon receipt of such petition the board of commissioners shall, through its chairman, transmit the petition to the state board of health requesting that the petition be granted. If, after a hearing, conducted under the same procedure as provided in § 130-35 of the General Statutes for the creation of sanitary districts, and after publication of notice thereof in the district, the state board of health shall deem it advisable to comply with the request of said petition, the state board of health shall adopt a resolution to that effect, and shall define the boundaries of the district, which shall be the boundaries of the district as it existed before the extension. (1927, c. 100, s. 24; 1943, s. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1.)

Editor's Note.—

The 1947 amendment added the last sentence of the first paragraph and the 1951 amendment added the second paragraph.

§ 130-57.01. Validating acts of state board of health in creating certain sanitary districts.—All acts heretofore done or proceedings heretofore taken by the state board of health for the purpose of creating or establishing any sanitary district are hereby legalized and validated notwithstanding any lack of power to perform such acts or to take such proceedings and notwithstanding any defect or irregularity in such acts or proceedings, provided such sanitary districts shall have heretofore issued bonds to finance improvements therein and provided said state board of health purporting to act in reliance upon chapter one hundred of the Public Laws of one thousand nine hundred and twenty-seven [§§ 130-33 to 130-56], shall have adopted a resolution creating or establishing such sanitary district after holding, through its representative, a public hearing concerning the creation of such sanitary district, and a notice of such hearing, stating the time and place at which it would be held, shall have been published at least five times in a newspaper published in or near such sanitary district and having a general circulation therein. Any such district shall be, and hereby is declared to be, a body politic and corporate and shall have all the powers conferred by law upon sanitary districts. (1945, c. 89, s. 1.)

§ 130-57.02. Validating acts of certain sanitary district boards.—All acts heretofore done or proceedings heretofore taken by the sanitary district board of any such sanitary district for the purpose of issuing bonds of such sanitary district and any bonds heretofore issued by or on behalf of such sanitary district, are hereby legalized and validated notwithstanding any lack of power to perform such acts or to take such proceedings or to issue such bonds and notwithstanding any defect or irregularity in such acts or proceedings or in the issuance of said bonds or in calling, holding or canvassing the result of any special election at which the question of issuing said bonds was submitted to the voters of such sanitary district and notwithstanding any defect or irregularity in the election, appointment or qualification of any of the mem-

bers of such sanitary district board or other officers of such sanitary district, provided a majority of the qualified voters voting at an election held in such sanitary district prior to the issuance of such bonds shall have voted for the issuance of such bonds and a notice stating the date and place of such election shall have been published once at least thirty days prior to the date of such election in a newspaper published in or near such sanitary district and having a general circulation therein, and provided the aggregate principal amount of all such bonds does not exceed the maximum amount of the bonds as stated in such notice of election, and provided the local government commission shall have heretofore approved the issuance of such bonds. All such bonds issued by any such sanitary district shall be, and are hereby declared to be, legal and binding obligations of such sanitary district. (1945, c. 89, s. 2.)

§ 130-57.03. Authorizing certain sanitary district boards to levy taxes.—The sanitary district board of any such sanitary district is hereby authorized to levy, or cause to be levied, annually a special tax ad valorem on all taxable property in such sanitary district for the special purpose of paying the principal of and interest on any such bonds, and such tax shall be sufficient for such purpose and shall be in addition to all other taxes which may be levied upon the taxable property in said sanitary district. (1945, c. 89, s. 3.)

§ 130-57.1. Dissolution of certain sanitary districts.

If, after the hearing, the county board of commissioners approves the petition, the chairman shall transmit the petition to the state board of health requesting that the sanitary district be dissolved. The state board of health or the secretary and state health officer shall name a time and place within the district at which the board of health, through a representative, shall hold a public hearing concerning the dissolution of the district. The state board of health or the secretary and state health officer shall cause notice of the hearing to be given by publication at least once a week for two successive weeks in a newspaper published in or near the district, and having a general circulation therein. In the event that all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, any such hearing may be continued at a time and place determined by the representative of the state board of health. If after such hearing, the state board of health shall deem it advisable to comply with the request of said petition, it shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved. (1943, c. 620; 1951, c. 178, s. 2.)

Editor's Note.—The 1951 amendment inserted "or the Secretary and State Health Officer" in the second and third sentences of the second paragraph. As the first paragraph was not changed by the amendment it is not set out.

§ 130-57.2. Validation of annexation of territory to sanitary districts.—All acts heretofore done or proceedings heretofore taken by the state board of health, any board of county commissioners, and any sanitary district board for the purpose of extending the boundaries of any sanitary district where said territory which was an-

nexed contained no resident freeholders, and where the owner or owners of the real property annexed requested of such sanitary district board that said territory be annexed to and be within the boundaries of such sanitary district, are hereby legalized and validated, notwithstanding any lack of power to perform such acts or to take such proceedings, and notwithstanding any defect or irregularity in such acts or proceedings. (1947, c. 463, s. 2.)

§ 130-57.3. Validation of creation or dissolution of sanitary districts and of bonds thereof.—The action of the various boards of commissioners of the various counties of the State and the action of the state board of health heretofore had and taken in the formation and creation of sanitary districts in the State wheresoever situate and the formation and creation or the dissolution of any sanitary district, or the attempted formation and creation, or dissolution, of all sanitary districts in the State by the acts of the various county commissioners of the State and the state board of health or other officers of the State, and all elections held in any sanitary district of the State or in any district purporting to be a legal sanitary district of the State by virtue of the purported acts and authority of any board of county commissioners and the state board of health, for the purpose of authorizing the issue and sale of bonds of the said sanitary districts in order to secure funds for the construction and maintenance of water and/or sewer systems and all of such bonds themselves, and all the acts and procedure in anywise had and taken by any and all officials and persons in relation to the formation and creation of such sanitary districts and the issue and sale of such bonds, are hereby in all respects, legalized, ratified, approved, validated and confirmed, and all such bonds are declared to be legal and binding obligations of such sanitary districts, respectively, when issued and sold as such, and the acts and procedure in anywise had and taken by any and all officials and persons in relation to the dissolution of sanitary districts are hereby in all respects legalized, ratified, validated and confirmed. (1951, c. 178, s. 3.)

§ 130-57.4. Validation of creation of districts and selection of board members.—All the acts and procedure in anywise had and taken in relation to the formation and creation of any sanitary district in the State and in the appointment or election of members of any district board are in all respects ratified, approved, confirmed and validated, and any members so appointed or elected shall have all the powers and may perform all of the duties required or permitted of them to be performed by this article until their successors are elected and qualified; provided, however, that any vacancy in any sanitary district board may be filled as provided in § 130-38 of the General Statutes. (1951, c. 846, s. 3.)

Art. 7. Special-Tax Sanitary Districts.

§ 130-58. Question of special sanitary tax submitted; district formed.

In case a majority of the qualified voters who shall vote thereon at the election shall vote in favor of the tax, the same shall be annually levied

and collected in the manner prescribed for the levy and collection of other taxes.

(1949, c. 880, s. 2; 1951, c. 17, s. 2.)

Editor's Note.—The 1951 amendment rewrote the next to the last sentence so as to make the election governed by a majority of those voting. The same change had been made by the 1949 amendment which was not constitutionally adopted. Only the changed sentence is set out. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 130-59. Election as to enlarging district.—Upon the written request of a majority of the health committee of any special-tax district, the county board of health may enlarge the boundaries of any special-tax district established under this article, so as to include any contiguous territory, and an election in such new territory may be ordered and held in the same manner as prescribed in this article for elections in special-tax districts; and in case a majority of the qualified voters who shall vote thereon at such election in such new territory shall vote in favor of a special tax of the same rate as that voted and levied in the special-tax district to which said territory is contiguous, then the new territory shall be added to and become a part of the said special-tax district; and in case a majority of the qualified voters who shall vote thereon shall vote against said tax, the district shall not be enlarged. (1913, c. 154, s. 1; 1949, c. 880, s. 2; 1951, c. 17, s. 2; C. S. 7079.)

Editor's Note.—Prior to the 1951 amendment the election depended upon the vote of a majority of the qualified voters in the new territory. The same change had been made by the 1949 amendment, which was not adopted in accordance with the applicable constitutional provisions. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 130-60. Election to abolish or to restore district or increase tax.

If at such election the majority of the qualified voters who shall vote thereon in said district shall vote "Against Special Tax," said tax shall be deemed revoked and shall not be levied, and said district shall be discontinued.

(1949, c. 880, s. 2; 1951, c. 17, s. 2.)

Editor's Note.—The 1951 amendment inserted in the second sentence the words "who shall vote thereon." The same change had been made by the 1949 amendment which was not constitutionally adopted. As the rest of the section was not affected by the amendment it is not set out. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

Art. 8. Local and District Health Departments.

§ 130-66. Local and district health departments authorized.—1. Creation of Departments Authorized.—The state board of health is hereby authorized to use any available funds at its command, not otherwise appropriated, to establish fulltime local and district health department service for any town, city and county, or group of such units in the state where the local governing powers desire the formation of such a department and are willing to assist financially in the enterprise, to an amount at least equal to the amount of state financial assistance.

2. When District Health Departments Including More Than One County Shall Be Formed.—Under the rules and regulations established by the state board of health of North Carolina, district health departments or units including more than one county may be formed when the following conditions exist:

(a) When the funds derived from the tax levy made under the authority of § 130-29 or such greater rate as a county may levy, plus available state and other funds, are insufficient to provide a minimum standard department of one medical officer, two nurses, one sanitary officer, one clerk, and a regular dental program.

(b) When in the opinion of the state board of health of North Carolina special problems or special projects arise which can be handled more advantageously on a district basis and the consolidation is approved by the state health officer and the health department or board of health of each county involved.

3. Organization Plans for District Health Departments.—Where two or more counties are combined into a district health department, the state health officer shall choose three or more ex-officio members, naming at least one from each participating county, including one chairman of a county board of commissioners, one mayor of a town which is the county seat, and one county superintendent of schools. These ex-officio members shall be appointed by the state health officer during the first week of each December following the general election in which members of the general assembly are elected and shall serve for a period of two years from and after date of appointment. The terms or appointments of all ex-officio members heretofore made prior to March 25, 1947, shall end on the 30th day of November, 1948. These ex-officio members shall hold an annual election meeting the first week in January of each year for the purpose of electing public members; the public members shall be four in number, one of whom shall be a dentist, one a physician, one a registered pharmacist, and the other one shall be a public spirited citizen. Where either of the three specified public members, namely a physician, or a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, this place shall be filled with a public spirited citizen. The first election meeting of the ex-officio members shall be the first week in January, one thousand nine hundred and forty-six, and at this meeting one of the public members shall be elected or appointed for a period of four years, one for three years, one for two years, and one for one year; thereafter one member shall be elected each year for a term of four years; in cases where more than three counties are combined into a district there shall be at least one ex-officio member, who is a chairman of the board of county commissioners, mayor of the town which is the county seat, or a county superintendent of schools, from each county; in cases where more than one city in a county participates by law in the support of the health department, the mayor of each such participating city or town shall be ex-officio a member of the board of health; in all instances the ex-officio members shall elect four members as hereinbefore provided; the board of health shall elect its chairman, who shall not have the right to vote except in case of a tie; a majority of the members of the district board of health shall constitute a quorum and the district health officer shall act as secretary to such board of health.

(a) All vacancies in the ex-officio membership of a district board of health caused by death,

resignation or any other reason, shall be filled by appointments made by the state health officer. Such appointments shall be made from any of the public officers or officials of the county of the member causing the vacancy, and the duties of such public officials as members of said district board of health shall be ex-officio duties. Such appointments to fill vacancies of ex-officio members shall be for the unexpired term of the member or members causing the vacancy or vacancies and shall extend until the time for the next regular appointments of ex-officio members. All vacancies in membership of the public members of a district board of health shall be filled by the district board of health at its next regular meeting following the creation of the vacancy. The member or members appointed to fill a vacancy of a public member shall be from the same county as the member causing the vacancy. In case any public member so appointed is a public officer or official, his membership and duties on the district board of health as a public member shall be deemed to be ex-officio.

4. Regulations.—The rules, regulations and ordinances of the district board of health shall apply to municipalities within a county or counties composing the district, but the district board of health shall not have power to pass special ordinances covering a municipality only, such authority being implicit in and retained by the governing body of the municipality. The district board of health shall have the immediate care and responsibility of the health interests of its district. It shall meet annually in some city or town in the district designated by it, and three members of the board are authorized to call a meeting of the board whenever in their opinion the public health interests of the district require it. It shall make such rules and regulations, and pay all lawful fees and salaries, and enforce such penalties as in its judgment shall be necessary to protect and advance the public health. If any person shall violate the rules and regulations made and established by a district health department, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty days.

5. District Health Officer.—The district board of health shall elect a health officer meeting the qualifications set forth by the merit system council as provided by chapter one hundred and twenty-six of the General Statutes of North Carolina, and also subject to the approval of the state health officer. The term of office shall be at the pleasure of the district board of health. Emergency and temporary appointments may be made when necessary with the approval of the state health officer. When, in the case of a vacancy, the district board of health fails to elect a health officer within sixty days after receiving notification from the state health officer that a vacancy exists, it shall be the duty of the state health officer to appoint a health officer for the district. In counties composing a district the election of a county physician shall be by the board of commissioners of each county and the resident members of the district board of health in a joint session. Such election shall take place during January of the odd years of the calendar and shall be for a two-year term. The salary of the county physician shall be

paid by the board of county commissioners at such time and in such sum or amount as may be mutually agreed upon between the board of county commissioners and the county physician. The members of the district board of health while on duty shall each receive a per diem of four dollars (\$4.00). (1935, c. 142, s. 1; 1945, c. 1030, s. 1; 1947, c. 474, ss. 1, 2; 1949, c. 159.)

Editor's Note.—The 1945 amendment added subsections 2 through 5.

The 1947 amendment inserted the second and third sentences of subsection 3 and added paragraph (a) thereto.

The 1949 amendment added the last sentence of subsection 4.

For brief comment on the 1949 amendment, see 28 N. C. Law Rev. 84.

A district board of health is a creature of the legislature and has only such powers and authority as are given it by the legislature. *State v. Curtis*, 230 N. C. 169, 52 S. E. (2d) 364.

It is without authority to prescribe criminal punishment for the violation of its rules and regulations promulgated under subsection 4 of this section, since such board is without power and authority to make laws, and if the statute be deemed sufficiently broad to grant it such authority, the delegation of such power is unconstitutional. *State v. Curtis*, 230 N. C. 169, 52 S. E. (2d) 364.

While a district board of health is given power and authority to make rules and regulations, and to enforce penalties, it is not given the power and authority to make laws. Thus in declaring it to be unlawful for any person to sell milk in the district without having first obtained a permit, and in prescribing criminal punishment for a violation of the requirement, a district board of health exceeded its authority. *Id.*

The 1949 Amendment Is Not Retroactive.—The 1949 act, amendatory of subsection 4 is not applicable to a prior violation of a rule or regulation established by a district board of health. *State v. Curtis*, 230 N. C. 169, 52 S. E. (2d) 364.

SUBCHAPTER II. VITAL STATISTICS.

Art. 9. Registration of Births and Deaths.

§ 130-78. Stillborn children to be registered.—

A stillborn child shall be registered as a birth and also as a death, but only one certificate shall be required of such birth and death, which shall be filed with the local registrar, the certificate to contain, in place of the name of the child, the word "stillbirth"; but no certificate of birth nor certificate of death shall be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall sign as the attendant but shall not sign the medical certificate of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in this article. (1913, c. 109, s. 6; 1933, c. 9, s. 2; 1951, c. 1091, s. 1; C. S. 7093.)

Editor's Note.—

The 1951 amendment rewrote the last sentence. The amendatory act inadvertently referred to this section as "13-78" when "130-78" was obviously intended.

§ 130-79. Contents of death certificate.—The certificate of death shall contain, as a minimum, those items prescribed and specified on the standard certificate of death as prepared by the national agency in charge of vital statistics and as the

same may be changed or amended by the North Carolina state registrar of vital statistics.

The personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the state registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required above, if he is able to do so, and may state where, in his opinion, the disease was contracted. (1913, c. 109, s. 7; 1949, c. 161, s. 1; C. S. 7094.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 130-80. Death without medical attendance; duty of undertaker and officials.—In case of death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification. When there is no local health officer or person acting as health officer, the registrar shall refer the case to the coroner or other proper officer for investigation and certification, who shall make the certificate of death required for a burial permit, stating therein the name of the disease causing death; or, if from external causes, (1) the means of death, and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State registrar in order properly to classify the death. (1913, c. 109, s. 8; 1951, c. 1091, s. 2; C. S. 7095.)

Editor's Note.—The 1951 amendment deleted the former second sentence and rewrote the former third sentence, now appearing as the second sentence.

§ 130-80.1. Preparation of death certificates for members of the armed forces killed outside of the United States.—The state registrar of vital statistics, upon presentation of an official notice of death from the United States government for a member of the armed forces killed outside of the United States, shall prepare a death certificate showing such facts pertaining to such death as may be available from the government notice. Such certificate shall be placed on file in the office of the state registrar and shall be permanently preserved. The state registrar of vital statistics shall forward a copy of such certificate to the register of deeds of the county of the last known

residence of such deceased person. Certified copies of such certificates shall be prepared by the state registrar or his duly authorized agent, upon request, and such copies shall be accepted as prima facie evidence of the facts stated therein. (1949, c. 174.)

§ 130-88.1. Register of deeds may perform notarial acts.—The register of deeds is hereby authorized to take acknowledgments, administer oaths and affirmations, and to perform all other notarial acts necessary for the registration of a birth certificate four years or more after the birth.

All acknowledgments taken, affirmations or oaths administered, or other notarial acts performed by the register of deeds, prior to the ratification of this section, relative to the registration of birth certificates four years or more after birth, are hereby validated. (1945, c. 100.)

§ 130-89. Contents of birth certificate.—The certificate of birth shall contain, as a minimum, those items prescribed and specified on the standard certificate of birth as prepared by the national agency in charge of vital statistics and as the same may be amended or changed by the North Carolina state registrar of vital statistics: Provided, that in case of an illegitimate birth, the father's name shall not be shown on the certificate without his written consent and, provided further, that in case of an illegitimate birth, the last name of the child shall be the same as that of the mother or, if requested in writing, the name of the child shall be the same as the person or persons caring for the child when such request is made by both the mother of the child and the person or persons caring for the child, or, if the mother of the child is deceased, then the person or persons caring for such child may make such a request for such change. (1913, c. 109, s. 14; 1949, c. 161, s. 2; C. S. 7102.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 130-93.1. Certificate of identification for child of foreign birth.—In the event that a new birth certificate cannot be obtained for an adopted child born in a foreign country and having legal settlement in this state, the information pertaining to the birth as provided for in § 130-102 may be filed for such child with the state registrar, provided that the country of birth shall be specified in lieu of the state of birth. (1949, c. 160, s. 2.)

§ 130-94. State registrar to supply blanks; to perfect and preserve birth certificates.

No persons other than those authorized by the state registrar shall have access to the original birth and death records. (1913, c. 109, s. 17; 1941, c. 297, s. 2; 1949, c. 160, s. 3; C. S. 7105.)

Editor's Note.—The 1949 amendment added the above sentence at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

§ 130-99.1. State registrar to forward copies of certificates of nonresidents.—Upon receipt of the original certificates of birth, death, and stillbirth from the local registrars of vital statistics, the state registrar shall prepare a copy of each certificate except in the case of a child born out of wedlock that was filed in a county other than the county of residence. Such copies shall be forwarded within thirty days to the register of deeds of the county of residence. (1949, c. 133.)

§ 130-101. Pay of local registrars.—Each local registrar shall be paid the sum of fifty cents for each birth certificate and each death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the state registrar, as required by this article. And in case no births or deaths were registered during any month, the local registrar shall be entitled to be paid the sum of fifty cents for each report to that effect, but only if such report be made promptly as required by this article. The compensation of local registrars for services required of them by this article shall be paid by the county treasurers. The state registrar shall certify every six months to the treasurers of the several counties the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; Ex. Sess. 1920, c. 58, s. 2; 1949, c. 306; C. S. 7110.)

Local Modification.—Bladen: 1949, c. 480; Mitchell: 1951, c. 935, s. 1.

Editor's Note.—The 1949 amendment struck out the former provisions relating to incorporated municipalities.

§ 130-102. Certified or photostatic copy of records; fee.—The state registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. Such certified copy of the birth record shall be issued in the form of a birth registration card which shall include only the full name, birth date, city and county of birth, race, sex, date of filing, and birth certificate number: Provided, that a full and complete copy of the birth certificate shall be supplied upon request to the registrant, if of legal age; or to the parent or parents; or to public welfare or public health agencies; or to duly licensed private welfare agencies upon the approval of the state registrar; or to any other person, for good cause shown, upon the order of a judge of the superior court. Such birth registration card, properly certified by the state registrar or his duly authorized agent, shall be prima facie evidence of the facts stated therein. The United States census bureau may, however, obtain, without expense to the state, transcripts or certified copies of births and deaths without payment of the fees herein prescribed, and for transcripts so furnished the state registrar may receive from the census bureau such compensation for this service, as the state board of health may approve. Any copy of the record of a birth or death, properly certified by the state registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the treasurer of the state board of health. Provided, that upon the receipt of a certificate of birth as provided in § 130-99, unless said child was born out of wedlock, the state registrar shall with-

in three months forward a certified copy thereof for the child to the address of the mother, if living; and if not, to the father or person standing in loco parentis to said child. No fee shall be collected for supplying this certificate.

In lieu of a certified copy of the record of any birth or death registered under the provisions of this article, the state registrar may, upon request, supply to any applicant a photostatic copy of such record with a photostatic copy of the certificate of the state registrar signed by a facsimile of his signature; and such photostatic copy of the record of a birth or death shall be prima facie evidence in all courts and places of the facts therein stated. The state registrar shall have the power and authority to appoint one or more employees or agents of the North Carolina state board of health; and upon such appointment by the state registrar, said employees or agents shall have the power and authority to issue a certified copy of the record of any birth or death registered under the provisions of this article and to sign the name of or affix a facsimile of the signature of the state registrar to the certification of said copy; and any copy of a record of a birth or a death, with the certification of same, so signed or the facsimile of the state registrar affixed thereto shall be prima facie evidence in all courts and places of the facts therein stated. The provisions of this section shall not apply to copies of birth certificates of adopted children. (1913, c. 109, s. 20; Ex. Sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25; 1941, c. 297, s. 4; 1947, c. 473; 1949, c. 160, s. 1; 1951, c. 1091, s. 3; C. S. 7111.)

Editor's Note.—

The 1945 amendments added the proviso and sentence at the end of the first paragraph and the 1947 amendment added the second paragraph.

The 1949 amendment inserted the second and third sentences of the first paragraph.

The 1951 amendment deleted the words "state of birth" in the ninth line and inserted in lieu thereof "city and county of birth" and added the last sentence.

§ 130-103. Information furnished to officers of American Legion or other veterans' organization.

—Upon application to the Bureau of Vital Statistics made by the Adjutant or any officer of a local post of the American Legion, or by any officer of any other veterans' organization chartered by Congress or organized and operating on a state-wide or nation-wide basis, it shall be the duty of the Bureau of Vital Statistics to furnish immediately to such applicant the vital statistical records and necessary copies thereof, made up in the necessary forms for the use of such applicant, without charge. This section shall apply only to members or former members of the armed forces of the United States who served in the First or Second World War and members of their families and/or beneficiaries under Government insurance or adjusted compensation certificate issued to such member or former member of the armed forces of the United States: Provided, that the state registrar shall furnish to any American Legion Post in this state, upon application therefor in connection with junior baseball, certified copies of birth certificates, without the payment of the fees prescribed in this section. (1931, c. 318; 1939, c. 353; 1945, c. 996.)

Editor's Note.—

The 1945 amendment made this section applicable to

officers of other veterans' organizations besides the American Legion and to veterans of the Second World War.

§ 130-103.1. Registers of deeds to issue birth certificates without cost to persons entering military forces.—The several registers of deeds of the State of North Carolina are authorized and directed to issue, free of cost, birth certificates to persons about to enter the United States military forces. (1951, c. 1113.)

§ 130-104. Violations of article; penalty.

5. Being a state registrar, a chairman of a board of county commissioners, a mayor of a city or town, a local registrar, a deputy registrar, or sub-registrar, shall fail, neglect, or refuse to perform his duty as required by this article and by the instructions and direction of the state registrar thereunder;

Shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars, and for each subsequent offense not less than ten dollars nor more than fifty dollars, or be imprisoned in the county jail not more than thirty days. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S. 7112.)

Editor's Note.—The portion of this section beginning with paragraph 5 is reprinted merely to show the proper typographical arrangement. The section in the original volume is somewhat confusing in that the penal provision appears as an integral part of paragraph 5 when in fact it applies equally to all of the paragraphs.

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC.

Art. 10. Water Protection.

§ 130-117. Discharge of sewage into water supply prohibited.

This section applies only when a public drinking-water supply is taken from the stream, in which instance proof of any injurious effect upon plaintiff's water supply is not required. *Banks v. Burnsville*, 228 N. C. 553, 46 S. E. (2d) 559.

In a suit by private individuals to restrain a municipality from emptying untreated sewage into a stream from which a public drinking-water supply is not taken, a complaint which fails to allege that plaintiffs' own land lies along or adjacent to the stream and that the acts complained of constitute a nuisance resulting in continuing, irreparable damages, is demurrable. *Id.*

Cited in *Veazey v. Durham*, 232 N. C. 744, 59 S. E. (2d) 429.

Art. 14. Infectious Diseases Generally.

§ 130-173. Physicians to report infectious diseases.

Editor's Note.—

In the second line in original the word "office" should read "officer".

§ 130-174. Parents and householders to report.

Editor's Note.—

The word "office" in the third line of this section should read "officer."

Art. 15. Smallpox.

§ 130-183. Immunization against smallpox.—(1) All children in North Carolina are required to be immunized against smallpox before attending any public, private, or parochial school.

(2) A parent, guardian, or person in loco parentis, of any such child not previously immunized, shall present the child to a physician licensed in North Carolina and request the physician to administer the necessary vaccine for immunization against smallpox.

(3) If the person is unable to pay for the services of a private physician, the child may be taken to the county health officer or county physician of the county in which the child resides where such service shall be provided free.

(4) The physician administering the smallpox vaccine shall submit a certificate to the local health or quarantine officer and give a copy to the parent, guardian, or person in loco parentis, of the child. Forms for the certificate shall be supplied by the state board of health.

(5) No principal or teacher shall permit any child to enter a public, private or parochial school without the certificate provided for in subsection (4), or some other acceptable evidence of immunization against smallpox; provided this section shall not apply to children whose parent or parents or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any public, private or parochial school shall be required as to them.

(6) If any physician licensed in North Carolina certifies that such vaccination is detrimental to a child's health, the requirements of this section shall be inapplicable until such vaccination is found no longer to be detrimental.

(7) The wilful violation of any part of this section is a misdemeanor punishable by a fine of not more than fifty dollars or by imprisonment for not more than thirty days in the discretion of the court. (1911, c. 62, s. 23; 1913, c. 181, s. 11; 1945, c. 495; C. S. 7162.)

Editor's Note.—The 1945 amendment rewrote this section.

Art. 16. Diphtheria.

§ 130-189. Article applicable to cities and towns.—The provisions of §§ 130-186 to 130-190 shall apply to cities and towns upon the same conditions as it does to counties. (1909, c. 389, s. 4; C. S. 7168.)

Editor's Note.—This section was reprinted to correct a typographical error.

§ 130-190. Immunization of children.—The parent or parents or guardian of any child in North Carolina shall have administered to such child between the ages of six months and twelve months an immunizing dose of a prophylactic diphtheria agent which meets the standard approved by the United States public health service for such biologic products.

It shall be incumbent upon the parent or parents or guardian of such child to present said child to a regularly licensed physician in the state of North Carolina, of his or her or their own choice, and request said physician to render this professional service. If the said parent or parents or guardian of such child are unable to pay for the services of a private physician of his or her or their own choice, they shall then present such child to the county health officer in the county in which such child resides and ask that an immunizing dose of prophylactic diphtheria agent which meets the standard approved by the United States public health service for such biologic products, be administered, and such county health officer shall administer such treatment.

If there is no regularly employed health offi-

cer in the given county in which the indigent parent or parents or guardian referred to in the third paragraph of this section resides, the parent or parents or guardian of the indigent child shall present such child to the county physician, who shall then administer the prophylactic diphtheria agent or secure the services of another regularly licensed physician in such county and pay such physician for such services to the said indigent child out of such funds of said county as are provided for such purposes.

The physician administering the prophylactic diphtheria agent shall submit a certificate to the local health or quarantine officer, and give a copy to the parent, guardian, or person in loco parentis, of the child. Furthermore, no principal or teacher shall permit any child to enter a public, private, or parochial school without this certificate or some other acceptable evidence of immunization against diphtheria; provided this act shall not apply to children whose parent or parents or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any public, private or parochial school shall be required as to them.

Any wilful violation of this section, or any part thereof, shall constitute a misdemeanor and shall be punishable at law by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not more than thirty (30) days, in the discretion of the court. Provided this section shall not apply to children whose parent or parents or guardians are bona fide members of a religious organization whose teachings are contrary to the practices herein required, and no certificates for admission to any public, private or parochial school shall be required as to them. (1939, c. 126; 1945, c. 494; 1951, c. 137.)

Editor's Note.—

The 1945 amendment rewrote the present fourth paragraph and the 1951 amendment struck out the former second paragraph relating to children between the ages of twelve months and five years.

Art. 16A. Whooping Cough.

§ 130-190.1. Immunization against whooping cough.—(1) **Required for Young Children.**—All children in North Carolina are required to be immunized against whooping cough before reaching the age of one year.

(2) **Procedure.**—A parent, guardian, or person in loco parentis, of any such child not previously immunized, shall present the child to a physician licensed in North Carolina and request the physician to administer to such child a sufficient dosage of a prophylactic whooping cough agent. All whooping cough prophylactic agents used in compliance with this section must meet the standards required by the state board of health.

(3) **Free Services for Needy Persons.**—If the person is unable to pay for the services of a private physician, or for the prophylactic agent, the child may be taken to the county health officer or county physician of the county in which the child resides where such prophylactic agent shall be provided and administered free. The county appropriating body shall make available sufficient funds for the purchase of such immunizing agent for such cases.

(4) **Certificate of Immunization.**—The physician

administering the whooping cough dosage shall submit a certificate to the local health or quarantine officer and give a copy to the parent, guardian, or person in loco parentis, of the child. Forms for the certificate shall be supplied by the state board of health.

(5) **Prohibiting Nonimmunized Children from Attending School.**—No principal or teacher shall permit any child to enter a public, private or parochial school without the certificate provided for in subsection (4), or some other acceptable evidence of immunization against whooping cough.

(6) **Dosage Detrimental to Health.**—If any physician, licensed to practice in North Carolina, certifies that such dosage is detrimental to a child's health, the requirements of this section shall be inapplicable until such dosage is found no longer to be detrimental.

(7) **Violation a Misdemeanor; Exceptions.**—The wilful violation of any part of this section is a misdemeanor punishable by a fine of not more than fifty dollars or by imprisonment for not more than thirty days in the discretion of the court; provided this section shall not apply to children whose parent or parents or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any public, private or parochial school shall be required as to them. (1945, c. 528.)

Art. 19A. Prevention of Spread of Tuberculosis.

§ 130-225.1. Health officer to cause suspects to be examined.—When any health officer shall have reasonable grounds to believe that any person has tuberculosis in an active stage or in a communicable form, and who will not voluntarily seek a medical examination, then it shall be the duty of such health officer to order such person, either orally or in writing, to undergo an examination by a physician qualified in chest diseases or at some State or county sanatorium for tuberculosis or at some clinic or hospital approved by the North Carolina State Board of Health for such examinations. The health officer and the person suspected of having tuberculosis shall, if possible, agree upon the time and place of examination, but if no satisfactory time and place can be arranged by agreement, then the health officer shall fix a reasonable time and place for such examination, and it shall be the duty of such suspected person to present himself or herself for examination at such time and place as ordered by the health officer. The examination shall include an X-ray of the chest, a sufficient number of microscopical examinations of sputum, and such other forms and types of examinations as shall be approved by the North Carolina State Board of Health. If, upon such examination, it shall be determined that such person has tuberculosis in an active stage or in a communicable form, then it shall be the duty of such tuberculous person, as soon as he or she can reasonably do so, to arrange for admission of himself or herself as a patient in one of the State sanatoriums for tuberculosis, or in one of the county sanatoriums for tuberculosis or in some private hospital or in the ward of a private hospital maintained and operated for the treatment of tuberculous patients,

or when there is no danger to the public or to other individuals as determined by the health officer, he or she may receive treatment at home. (1943, c. 357; 1945, c. 583; 1951, c. 448.)

Editor's Note.—The 1951 amendment rewrote this article which formerly related only to the punishment for failure to comply with instructions of agent of local board of health.

For comment on this section, see 21 N. C. Law Rev. 353.

§ 130-225.2. Precautions necessary pending admission to the hospital.—Whenever it has been determined that any person has tuberculosis in an active stage or in a communicable form, and such person is not immediately admitted as a patient in any State sanatorium for tuberculosis, county sanatorium for tuberculosis or in any private hospital or ward of a private hospital maintained for the treatment of tuberculosis, it shall be the duty of the county health officer to instruct such person as to the precautions necessary to be taken to protect the members of such person's household or the community from becoming infected by tuberculosis communicated by such person, and it shall be the duty of such tuberculous person to conduct himself and to live in such a manner as not to expose members of his family or household, or any other person with whom he may be associated to danger of infection, and said health officer shall investigate from time to time for the purpose of seeing if said instructions are being carried out in a reasonable and acceptable manner. Any person shall be guilty of a misdemeanor who shall wilfully fail to do any of the following acts:

(a) Wilfully fail and refuse to present himself or herself to any private physician qualified in chest diseases, hospital, clinic, county sanatorium or State sanatorium for an examination for tuberculosis at such time and place as ordered by the health officer or at such time and place agreed upon between such suspected person and the health officer.

(b) Wilfully fail and refuse to present himself or herself for admission as a patient to any State sanatorium, county sanatorium, provided such facilities are available, or private hospital or ward of a private hospital maintained and operated for the treatment of tuberculous persons when such action is found by the health officer to be necessary for the prevention of spread of the disease, in accordance with the provisions of § 130-225.1.

(c) Wilfully fail or refuse to follow the instructions of the health officer as to the precautions necessary to be taken to protect the members of his or her household or any member of the community or any other person with whom he or she may be associated from danger of infection by tuberculosis communicated by such person.

If any person shall be convicted of any of the violations set forth in paragraphs (b) and (c) immediately above or shall enter a plea of guilty thereto when charged with such violations, then such person shall be imprisoned in the prison department of the North Carolina sanatorium or if the defendant is a female, such female shall be imprisoned in the hospital section of the woman's division of the State's prison until provision is made for caring for female prisoners at the North Carolina sanatorium. The period of imprisonment shall be for a period of two years. The medical superintendent of the State sanatorium, upon signing and placing among the permanent records of

the North Carolina sanatorium a statement to the effect that such person may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed at any time during the period of commitment. He shall report each such discharge, together with a full statement of the reasons therefor, at once to the health officer serving the territory from which the person came and to the board of trustees or other controlling authority of such sanatorium and to the prison division of the State Highway and Public Works Commission. The court may suspend judgment, however, if such convicted person shall be hospitalized in a county sanatorium and shall remain there until discharged by the medical superintendent or controlling authority of any county sanatorium. The medical superintendent of the North Carolina sanatorium, with the advice and consent of the commissioner of paroles, where he finds in an occasional and rare instance that a person committed to the prison division of the State sanatorium has obeyed the rules and regulations of such division or department for a period of not less than sixty (60) days may, in his discretion, have the authority to transfer any patient who, in his judgment, will conform to the rules of the sanatorium, from the prison division to the central or main sanatorium, and the medical superintendent shall be responsible for his care and custody. The medical superintendent of any State sanatorium or the medical superintendent or controlling authority of any county sanatorium is hereby authorized, empowered and directed to transfer and deliver to the United States veterans bureau of other appropriate department or bureau of the United States government or to the representative or agent of such veterans bureau or other department or bureau of said government any inmate or convicted tuberculous person, being soldiers or sailors or other members of the armed forces who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said prison division or who may be admitted to any State sanatorium or county sanatorium. (1943, c. 357; 1945, c. 583; 1951, c. 448.)

Art. 22. Surgical Operations on Inmates of State Institutions.

§ 130-243.1. Permission for surgical operations where emergency exists.—Notwithstanding the provisions of §§ 130-242 and 130-243, when in the opinion of the medical staff or medical superintendent or director of a state institution, a patient, inmate or prisoner is suffering from an acute medical or surgical condition which if allowed to continue without surgical operation will within the space of a few hours seriously endanger the life of the aforesaid patient, inmate or prisoner, and where it has not been possible within a reasonable length of time to notify, and to secure permission for the operation from some responsible member of the family for the surgical operation deemed necessary, the medical superintendent, surgical consultant, and local health officer of the county in which the institution is located shall constitute a board to pass upon the seriousness of the condition of the aforesaid patient,

inmate, or prisoner and may by unanimous agreement authorize the surgical operation deemed necessary including the administration of an anesthetic and the surgical consultant may proceed with the surgical operation without further consent being necessary.

The description of the medical and surgical condition of the patient and the measures taken to obtain permission for the operation shall be made a part of the medical record of the institution, signed by the medical superintendent or director, the surgical consultant, and the local health officer and copies of this shall be furnished the surgical consultant and the local health officer. (1947, c. 537, s. 24.)

§ 130-243.2. Operative permission when no responsible relative or guardian can be found.—Notwithstanding the provisions of §§ 130-242, 130-243 and 130-243.1, when it shall appear to the medical staff or consultants of a State hospital or State institution that a patient, inmate or prisoner of such State hospital or State institution is in need of some type of surgical operation for the preservation or restoration of health and when no responsible relative or guardian of such patient, inmate or prisoner can be located, as shown by the return of a registered letter to the last known address of the guardian or responsible relative, the medical superintendent or the director of the State institution, the surgical consultant, and the local health officer of the county in which the hospital or institution is located shall constitute a board to pass upon the physical condition of the patient and may by unanimous agreement authorize the surgical operation deemed necessary, including the administration of an anesthetic, and the surgical consultant or qualified medical staff member may proceed with the surgical operation without further consent being necessary.

A description of the medical and surgical condition of the patient and the type of operation performed, signed by the board referred to above, shall be made a part of the medical record of the hospital or institution, and a copy of this description shall be furnished to the surgical consultant, the local county health officer, and the clerk of court of the county from which the patient was admitted or committed. (1951, c. 775.)

Art. 25. Regulation of the Manufacture of Bedding.

§ 130-270. Manufacture regulated; required information to be stamped on tags; use of "sweeps" or "oily sweeps" material.—No person shall manufacture or sell a mattress to which, except as otherwise provided in § 130-274, is not securely sewed a cloth or cloth-backed tag at least two (2) inches by three (3) inches in size, to which is affixed the adhesive stamp provided in § 130-272. Such stamp shall be so affixed as not to interfere with the wording on the tag.

(1951, c. 929, s. 2.)

Editor's Note.—The 1951 amendment inserted the words "except as otherwise provided in § 130-274" in the second and third lines. As the rest of the section was not affected by the amendment, it is not set out.

§ 130-272. Enforcement funds.—The state health officer is hereby charged with the administration and enforcement of this article, and he shall provide specially designated adhesive stamps for use

under § 130-270. Upon request he shall furnish no less than five hundred said stamps to any person paying in advance eight dollars (\$8.00) per five hundred stamps. State institutions engaged in the manufacture of mattresses for their own use or that of another state institution shall not be required to use such stamps.

All money collected under this article shall be paid to the state health officer, who shall place all such money in a special "bedding law fund," which is hereby created and specifically appropriated to the state board of health, solely for expenses in furtherance of the enforcement of this article. The state health officer shall semiannually render to the state auditor a true statement of all receipts and disbursements under said fund, and the state auditor shall furnish a true copy of said statement to any person requesting it.

All money in the "bedding law fund" shall be expended solely for (a) salaries and expenses of inspectors and other employees who devote their time to the enforcement of this article, or (b) expenses directly connected with the enforcement of this article, including attorney's fees, which are expressly authorized to be incurred by the state health officer without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty per cent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the state board of health. (1937, c. 298, s. 5; 1949, c. 636.)

Editor's Note.—The 1949 amendment reduced the price of bedding stamps from ten dollars to eight dollars per five hundred.

§ 130-274. Licenses.—No person, except for his own personal use or the use of his immediate family, and blind persons operating under the direction of the state commission for the blind, shall manufacture mattresses until he has secured a license therefor from the state board of health upon payment of an annual inspection fee of twenty-five dollars (\$25.00), and in case such mattresses are manufactured from previously used material he shall also secure and pay for the additional license required under § 130-269. Any manufacturer who manufactures for sale and sells mattresses outside the State of North Carolina may, in lieu of paying the annual inspection fee of twenty-five dollars (\$25.00) provided in this section, secure a special manufacturer's license graduated on the amount of mattresses sold outside the State of North Carolina during the previous calendar year as follows:

Not exceeding 30,000 mattresses	\$ 25.00
30,000 to 50,000 mattresses	200.00
Over 50,000 mattresses	400.00.

The holder of a special manufacturer's license shall not be required to purchase or affix the adhesive stamps provided for in G. S. 130-270 and 130-272 with respect to mattresses manufactured for sale and shipment outside this State when such mattresses are in fact so sold and shipped. Notwithstanding any other provisions of this section, no mattresses shall be sold for use or resale in this State unless stamps have been affixed thereto as provided by G. S. 130-270 and 130-272. The licenses so issued shall be valid until the end of the calendar year in which issued, or until voided

for violation of this article, and shall at all times be kept conspicuously posted in the place of business.

The state health officer may revoke and void the aforesaid license and the sterilizing license issued under § 130-269 of any person convicted a second time for violating this article; and such person shall not thereafter make, remake, renovate, or sell a mattress for a period of six months after such revocation, and then only after he has paid the required fees for new licenses. (1937, c. 298, s. 7; 1951, c. 929, s. 1.)

Editor's Note.—The 1951 amendment added the provisions in the first paragraph pertaining to the special manufacturer's license.

Art. 27. Private Hospitals and Educational Institutions.

§ 130-280. Regulation of sanitation by state board of health.—To safeguard the health of patients, residents and students of private hospitals, sanitariums, sanatoriums and educational institutions in North Carolina, the state board of health is hereby authorized and empowered to make rules and regulations governing the sanitation of all such establishments and to provide a system of grading applicable thereto. (1945, c. 829, s. 1.)

§ 130-281. Inspection.—The officers, sanitarians and agents of the state board of health are hereby empowered and authorized to enter any private hospital, sanitarium, sanatorium, or educational institution for the purpose of making inspections, and it is hereby made the duty of every owner, superintendent, manager, agent or person in charge of such establishment to afford free access to every part of such establishment, and to render all aid and assistance necessary to enable the sanitarians or agents of the state board of health to make a complete examination thereof, but the privacy of no person may be violated without his consent. The sanitarian or agent shall leave with the management, or person in control, a copy of the report and a grade card showing the grade of such place, and it shall be the duty of said owner, superintendent, manager, agent or person in charge, to post said card in a conspicuous place where it may be readily observed by the patients, residents or students. The grade card shall not be removed by anyone, except an authorized sanitarian or agent of the state board of health, or upon its instruction. If any establishment receives a grade below the minimum standard set by the state board of health, a reasonable time shall be given by the state board of health in which to make the alterations necessary to raise the grade. If the alterations are not made within the time set, the owner, superintendent, manager, agent or other person in charge shall be subject to the penalties provided by § 130-282. (1945, c. 829, s. 2.)

§ 130-282. Violation a misdemeanor.—Any owner, superintendent, manager, agent, or person in charge of any hospital, educational institution, sanitarium, sanatorium, or any other person who wilfully obstructs, hinders or interferes with a sanitarian, agent, or officer of the state board of health, in the proper discharge of his duty, or who shall be found guilty of violating any other provision of this article, or any of the rules and regu-

lations that may be provided under this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars (\$10.00), nor more than fifty dollars (\$50.00), or imprisoned for not more than thirty (30) days. Each day the provisions of this article are violated shall constitute a separate offense. (1945, c. 829, s. 3.)

Art. 28. Cancer Control Program.

§ 130-283. State board of health to administer program.—The state board of health shall administer a program for the prevention and cure of cancer to the extent specified in this article, and to that end shall have the powers and duties hereinafter set forth. (1945, c. 1050, s. 1.)

Editor's Note.—The act from which this article was codified became effective July 1, 1945.

§ 130-284. Financial aid for diagnosis, hospitalization and treatment.—The state board of health shall furnish to cancer patients and such other low income citizens, legal residents of North Carolina, who comply with the rules and regulations specified by the state board of health, such financial aid within the appropriations made in this article, for diagnosis, hospitalization and treatment, as may be approved for said patients found by the state board of health to be entitled thereto. Such diagnosis, hospitalization and treatment shall be given said patients in any hospital in this state which meets the minimum requirements for cancer control established by the state board of health as the hospital where such diagnosis, hospitalization and treatment shall be given. In order to administer such financial aid in the manner which will afford the greatest benefit to said cancer patients and to the people of the state, the state board of health is hereby authorized to promulgate rules and regulations specifying the terms and conditions upon which cancer patients may receive such financial aid, and act upon such applications in the manner which in its judgment will best effectuate the purposes of this article. The state board of health may develop with the state board of public welfare procedures for determining the needs of indigent and other low income applicants for financial aid in carrying out the purposes of this article. (1945, c. 1050, s. 2.)

§ 130-285. Cancer clinics.—The state board of health is authorized to establish and designate minimum standards and requirements for the organization, equipment and conduct of cancer clinics or departments in general hospitals in this state to the end that said hospitals may intelligently prepare and equip their institutions adequately to diagnose, prevent and treat cancer. Provided that any clinic, group, organization or department set up, established or sponsored by the state board of health as set forth by this article shall,

1. Meet the minimum requirements of the American college of surgeons for tumor clinics; or the minimum requirements of the division of cancer control, North Carolina state board of health.

2. Each physician who shall staff such organization, board, or clinic, must be a diplomate of the American board of the specialty of medicine in which he is engaged, or one who has been approved by his county medical society or its duly

appointed representative, and the division of cancer control, North Carolina state board of health. (1945, c. 1050, s. 3; 1949, c. 1071.)

Editor's Note.—The 1949 amendment added that part of subsection 1 appearing after the semicolon, and that part of subsection 2 appearing after the word "engaged" in line four of said subsection.

§ 130-286. Educational program.—The state board of health shall collect information relating to the prevention and cure of cancer and shall sponsor an educational program for the purpose of aiding and informing the people of the state, as well as physicians and hospitals, in the prevention and cure of cancer, in the early diagnosis of cancer, and in its proper treatment. (1945, c. 1050, s. 4.)

§ 130-287. Gifts for program.—The state board of health is authorized to receive gifts or donations of money, securities, radium, X-ray, or other equipment or supplies, real estate, or any other property of any kind or description which may be used in the program for the prevention and cure of cancer. Any funds or intangibles donated for such purposes are to be deposited with the state treasurer and to be used in the cancer control work. (1945, c. 1050, s. 5.)

§ 130-288. Acquisition of hospitals, laboratories, etc.—The state board of health is authorized to acquire, by gift, purchase (within the limits of appropriations available for such purposes), devise or otherwise, such laboratories, hospitals, equipment and supplies, or any other property, real or personal, as said board shall deem needful to afford proper treatment and care to cancer patients in this state, and to carry out the program for the prevention and cure of cancer. (1945, c. 1050, s. 6.)

§ 130-289. Tabulation of records.—The state board of health shall compile, tabulate and preserve statistical, clinical, and other records relating to the prevention and cure of cancer. (1945, c. 1050, s. 7.)

§ 130-289.1. Reporting of cancer required.—It shall be the duty of every physician to notify the local health officer of the name, address and such other items as may be specified by the state health officer of any person by whom such physician is consulted professionally and who is found to have cancer of any type, or who is suspected of having cancer of any type. The report shall be made within five days after the diagnosis of cancer is established, or within five days after obtaining reasonable evidence for believing that such person is so afflicted. The forms used for reporting shall be prepared and supplied by the state board of health. The local health officer shall forward to the state board of health all report cards within five days of their receipt from the physician. (1949, c. 499.)

§ 130-290. Assistance to hospitals and physicians.—The state board of health shall assist

general hospitals in the state in organizing and conducting cancer clinics as a part of the cancer control program, and shall assist physicians and hospitals in establishing the early diagnosis of cancer and in preparing themselves to render the most efficient service in the cancer control program. (1945, c. 1050, s. 8.)

§ 130-291. Cancer committee of North Carolina medical society.—In formulating the plans and policies of the program for the prevention and cure of cancer, the state board of health shall consult with the cancer committee of the North Carolina medical society, which shall consist of one physician from each congressional district, to the end that the cancer control program shall most effectively serve the welfare of the people of the state, and such plans and policies shall be presented to and approved by said cancer committee. (1945, c. 1050, s. 9.)

Art. 29. Infants Prematurely Born.

§ 130-292. Notification of premature births to be given.—If an infant is born prematurely in a place other than a hospital equipped to care for prematurely born infants, and weighs five pounds and eight ounces (2500 grams) or less at birth the physician or midwife having charge of the birth of such infant shall forthwith give notification thereof to the local health department for the county in which such infant was born. In case there is no local health department operating or functioning for the county in which such infant was born, then such notification shall be given to the county physician of the county in which such infant was born. The notification shall state the name of the mother of such infant and the street address, or other address, where the infant is at the time of such notification. Such notification shall be given as soon as practicable after birth occurs and by telephone if possible, and if not then, a written report shall be filed within twenty-four hours after such birth with the local health department or the county physician of the county in which such infant was born in case there is no functioning health department. In the case of such an infant prematurely born in a hospital equipped to care for prematurely born infants, the superintendent, or other person in charge of such hospital, shall forthwith file with the local health department or the county physician of the county if there is no local health department for the county, such notification of the birth of such infant within twenty-four hours. After notification of proper agency or county physician, such agency or county physician shall take such steps as are necessary to provide proper care for said infant in accordance with best medical practice and to utilize, when possible, such state agencies as are available, including the North Carolina state board of health's program for premature care. (1949, c. 490.)

Chapter 131. Public Hospitals.

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- 131-129. Board authorized to acquire lands and erect buildings.
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Art. 2. Hospitals in Counties, Townships, and Towns.

§ 131-7. Trustees; terms of office; qualification and election.

Local Modification.—Lee: 1951, c. 1209, s. 1.

Art. 2A. The County Hospital Act.

§ 131-28.1. Title of article.—This article shall be known and may be cited as "The County Hospital Act." (1945, c. 506, s. 1.)

§ 131-28.2. Conveyance of hospitals to counties; assumption of indebtedness approved by voters.—The governing body of any political subdivision or public hospital corporation or agency in the state is authorized to convey any hospital owned by it to the county in which such political subdivision or public hospital corporation or agency is located, upon such county assuming all outstanding indebtedness of such political subdivision or public hospital corporation or agency which was incurred for the purpose of erecting or purchasing such hospital, and any county is hereby authorized to acquire any such hospital and, subject to the provisions of this section, to assume such indebtedness. The board of commissioners of any such county is hereby authorized and empowered to call an election of the qualified registered voters of

the county on the question of the assumption by such county of the outstanding indebtedness of such political subdivision or public hospital corporation or agency which was incurred for the purpose of erecting or purchasing such hospital, and the levy of a county-wide property tax without limitation as to rate or amount for the payment of the principal of and the interest on such indebtedness. Such election shall be called and conducted in accordance with the laws of North Carolina governing elections for the issuance of county bonds, and it shall be lawful to vote on other matters at such election. If a majority of the qualified registered voters of the county who shall vote on such assumption shall vote in favor thereof, then it shall be the duty of the board of commissioners of such county to include in the annual county budget beginning with the fiscal year next succeeding such election, a sum sufficient to meet the payment of the principal of and the interest on such indebtedness; provided, however, that said board shall have the same power and authority to fund or refund such indebtedness as it has to fund or refund other indebtedness of the county. Taxes levied under the terms of this section are hereby declared to be for a special purpose within the meaning of section six of article V of the constitution of North Carolina, and the levy of such taxes for said special purpose is hereby given the special approval of the general assembly. Upon the assumption of such indebtedness by the county, all funds on hand for the payment of the principal of and the interest on such indebtedness, and all funds subsequently collected from taxes already levied in such political subdivision on account of such indebtedness, shall be paid over to the county and used to reduce the amount of the county-wide tax levy authorized by such election. Upon approval of the assumption of such indebtedness by the county, such indebtedness shall become, to all intents and purposes, indebtedness of such county; and it is hereby specifically declared that all payments on account of the principal of such indebtedness which shall be made after such assumption shall be construed as a reduction of the outstanding indebtedness of the county within the meaning of section four of article V of the constitution of North Carolina. (1945, c. 506, s. 2; 1949, c. 358, s. 1.)

Editor's Note.—The 1949 amendment substituted in the fourth sentence the words "who shall vote on such assumption shall vote in favor thereof" for the words "shall vote in favor of such assumption." For brief comment on amendment, see 27 N. C. Law Rev. 454.

§ 131-28.3. Counties authorized to erect, purchase and operate hospitals.—Each county in the state is hereby authorized to erect, remodel, enlarge and purchase hospitals, to finance the same as provided in this article, and to provide for the operation thereof. (1945, c. 506, s. 3.)

§ 131-28.4. Issuance of bonds subject to approval of voters.—Subject to the approval by the vote of a majority of the qualified registered voters of the county who shall vote thereon at an election to be called and conducted in accordance with the laws of North Carolina, any county, through its board of commissioners, is hereby authorized and empowered to issue bonds of the county for the special purpose of erecting, remodeling, enlarging or purchasing hospitals, including the acquisition

of necessary land and necessary equipment, and to levy property taxes for the payment of such bonds and the interest thereon. Any bonds so voted, and any bond anticipation notes which may be issued to anticipate the receipt of the proceeds of such bonds, shall be issued in accordance with the provisions of the county finance act, as amended, and the local government act, as amended. (1945, c. 506, s. 4; 1949, c. 358, s. 2.)

Editor's Note.—The 1949 amendment inserted the words "who shall vote thereon" in line three. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 131-28.5. Referendum on question of tax to maintain hospital.—At any election at which the question of assumption by the county of hospital indebtedness pursuant to § 131-28.2, or at any election at which the question of issuing bonds of the county pursuant to § 131-28.4, shall be submitted to the qualified registered voters of the county, or at any other general or special election, there may be submitted to a vote of the qualified registered voters of such county the question of levying and collecting annually an ad valorem tax for the special purpose of maintaining any such hospital or hospitals from year to year, not greater than five cents on the one hundred dollars assessed valuation of taxable property in the county as shall be determined by the board of commissioners of such county, and if a majority of the qualified registered voters of the county who shall vote thereon shall vote in favor of levying and collecting such tax, the board of commissioners of such county shall be and hereby is authorized to levy and collect the same. The general assembly does hereby give its special approval to the levy of the tax for the special purpose referred to in this section. (1945, c. 506, s. 5; 1949, c. 358, s. 3.)

Editor's Note.—The 1949 amendment inserted the words "who shall vote thereon" in lines seventeen and eighteen. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 131-28.6. New registration may be ordered for election held under article.—A new registration may be ordered for any election to be held under this article, and in the event a new registration is ordered the same shall be called and conducted in accordance with the provisions of the laws of North Carolina governing the calling and conducting of elections for the issuance of county bonds. (1945, c. 506, s. 6; 1949, c. 358, s. 4.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 131-28.7. Result of election to be published; time to assert invalidity.—The board of commissioners of the county shall prepare a statement showing the number of votes cast for and against each question submitted under the provisions of this article, and the number of voters qualified to vote in each election at which any one or more of such questions shall be submitted, and declaring the result of the election on each such question, which statement shall be signed by a majority of the members of the board of commissioners and delivered to the clerk of said board, who shall record it in the minutes of the board and file the original in his office and publish it once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of any such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within

thirty days after the publication of such statement of result as provided herein. (1945, c. 506, s. 7.)

§ 131-28.8. Appointment of board of trustees; terms of office; vacancies.—Should a majority of the qualified registered voters of any county who shall vote thereon at an election called and held as above provided approve the assumption by the county of hospital indebtedness or the issuance of bonds of the county for the special purpose of erecting, remodeling, enlarging or purchasing a hospital or hospitals, the board of commissioners of the county shall proceed at once to appoint from the citizens of the county three trustees from each township in which a hospital or hospitals are to be acquired or erected hereunder, and one trustee from each of the remaining townships in the county, such trustees to be chosen with special reference to their fitness for such office. In the event that a hospital is thereafter acquired or erected hereunder in any of said remaining townships the board of commissioners shall thereupon appoint two additional trustees from such township. The trustees so appointed shall constitute a board of trustees for the hospital or hospitals acquired or erected under the provisions of this article. The first trustees from each township from which there shall be three trustees shall be appointed by the board of commissioners for terms of one, two and three years, respectively. The first trustees from the remaining townships shall be appointed for terms of one, two and three years, respectively, so that the terms of at least one third of the trustees from such remaining townships shall expire each year. As the term of each trustee expires a successor trustee shall be appointed from the same township for a term of three years. Each trustee shall serve until his or her successor is appointed and qualified. No trustee shall succeed himself or herself. Any vacancy in the board of trustees shall be filled by the board of commissioners of the county for the unexpired term. (1945, c. 506, s. 8; 1949, c. 358, s. 5.)

Local Modification.—Pitt: 1949, c. 877, s. 4.

Editor's Note.—The 1949 amendment inserted the words "who shall vote thereon" in line three.

§ 131-28.9. Organization of board; bond, compensation and duties of hospital treasurer; annual audit; reimbursement for expenses.—The trustees shall, within ten days after their appointment, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their number as chairman, and by the election of such other officers and committees as they shall deem necessary, including a treasurer for each hospital under the jurisdiction and control of such board, but none of such officers except the hospital treasurers shall be required to give bond. Each hospital treasurer shall give a bond in such amount as shall be fixed by the board of commissioners of the county, and shall receive such compensation, payable solely from hospital income, as shall be determined by the board of hospital trustees. The treasurer for each hospital shall receive all income of such hospital, including all moneys paid for the use of the facilities and services thereof, and shall pay out the same and account therefor as directed by the board of hospital trustees. He shall make a monthly report of

his receipts and disbursements to the board of commissioners of the county and the board of hospital trustees. An annual audit shall be made of the receipts and disbursements of each hospital by a certified public accountant selected by the board of commissioners of the county and copies of such audit shall be furnished the board of commissioners of the county and the board of hospital trustees, and a condensed copy of such audit shall be published in a newspaper of general circulation in the county. No trustee shall receive any compensation for services performed by him but he may receive reimbursement, from such hospital funds as the board of hospital trustees shall determine, for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and moneys paid out shall be made under oath by each of such trustees and filed with the board of hospital trustees and allowed by the affirmative vote of all the trustees present at any meeting of the board. (1945, c. 506, s. 9.)

§ 131-28.10. Board to adopt by-laws, rules and regulations; control of expenditures.—The board of hospital trustees shall make and adopt such by-laws, rules, and regulations for their own guidance and for the government of the hospital or hospitals under their jurisdiction and control as may be deemed expedient for the economic and equitable conduct and operation thereof, not inconsistent with this article or the ordinances of the city or town wherein such hospital or hospitals shall be located. The board of hospital trustees shall have the exclusive control of the expenditure of all moneys provided pursuant to the provisions of this article for the purpose of erecting, remodeling, enlarging, or purchasing hospitals, including the acquisition of necessary land and necessary equipment, and all moneys collected through the operation of such hospitals and all moneys provided for the maintenance and operation thereof, but no moneys provided for the payment of the hospital indebtedness of the county shall be subject to the control of such hospital board. (1945, c. 506, s. 10.)

§ 131-28.11. Appointment and removal of superintendent and other personnel; carrying out intent of article.—The board of hospital trustees shall have power to appoint suitable superintendents or matrons, or both, and necessary assistants, and to fix their compensation, and shall also have power to remove such appointees, and such board shall in general carry out the spirit and intent of this article in establishing and maintaining a county hospital or hospitals, with equal rights to all and special privileges to none. (1945, c. 506, s. 11.)

§ 131-28.12. Meetings of board; quorum; visitation; reports; pecuniary interest in purchase of supplies.—The board of hospital trustees shall hold meetings at least once every three months, and shall keep a complete record of all its proceedings. A majority of the members of the board shall constitute a quorum for the transaction of business. At least two of the trustees shall visit and examine the hospital or hospitals at least twice each month. The board of hospital trustees shall, during the first week in January of each year, file with the board of commissioners of the county a report of

its proceedings with reference to such hospital or hospitals, and a statement of all receipts and expenditures during the year, and shall at such times certify the amount necessary in its opinion to maintain and improve each hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for any county hospital, unless the same are purchased by competitive bidding. (1945, c. 506, s. 12.)

§ 131-28.13. Deposit and withdrawal of funds.—All moneys received for the credit of each hospital shall be deposited by the hospital treasurer in a special fund for such hospital, and shall be paid out only upon warrants drawn by such hospital treasurer or other proper officer designated by the board of hospital trustees upon due authorization by such board. (1945, c. 506, s. 13.)

§ 131-28.14. Condemnation proceedings.—If the board of hospital trustees and the owners of any property desired by the board for hospital purposes cannot agree as to the price to be paid therefor, the board shall report the fact to the board of commissioners of the county, and condemnation proceedings shall be instituted by such board of commissioners and prosecuted in the name of the county under the provisions of law for the condemnation of land for railroads. (1945, c. 506, s. 14.)

§ 131-28.15. Plans for buildings; advertising bids.—No hospital buildings shall be erected, remodeled or enlarged until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county buildings. (1945, c. 506, s. 15.)

§ 131-28.16. Donations and gifts.—Any person, firm, corporation or society desiring to make donations of money, personal property, or real estate for the benefit of any hospital acquired or erected hereunder shall have the right to vest title to the property so donated in the county, to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise or bequest of such property. (1945, c. 506, s. 16.)

§ 131-28.17. Persons entitled to benefit of hospital; charges for treatment; exclusion for violation of rules.—Every hospital acquired or constructed under this article shall be for the benefit of the inhabitants of the county and of any person falling sick or being injured or maimed within the limits of the county; but every person using the facilities or services of any such hospital who is not a pauper shall pay a reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board of hospital trustees, such hospital or hospitals always being subject to such reasonable rules and regulations as the board may adopt for the purpose of rendering the use of such hospital or hospitals of the greatest benefit to the greatest number. The board of hospital trustees may exclude from the use of any such hospital all persons who shall wilfully violate such rules and regulations. Such board may extend the privileges and use of any such hospital to persons residing outside of the county upon such terms and condi-

tions as may be prescribed from time to time by its rules and regulations. (1945, c. 506, s. 17.)

§ 131-28.18. Persons and articles subject to rules and regulations.—When such hospital or hospitals are established as county public hospitals the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of the same, and all furniture and other articles used therein or brought thereto, shall be subject to such rules and regulations as the board of hospital trustees may prescribe. (1945, c. 506, s. 18.)

§ 131-28.19. Regulation of physicians and nurses.—The board of hospital trustees shall determine the conditions under which the privileges of practice within the hospitals under its jurisdiction and control shall be available to physicians, and the board shall promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospitals. (1945, c. 506, s. 19.)

§ 131-28.20. Training school for nurses.—The board of hospital trustees may establish and maintain, in connection with and as a part of any hospital under its jurisdiction and control, a training school or training schools for nurses. (1945, c. 506, s. 20.)

§ 131-28.21. Powers granted are additional.—The powers granted by this article are in addition to and not in substitution for existing powers of counties in the state of North Carolina. (1945, c. 506, s. 21.)

§ 131-28.22. Validation of elections.—All elections heretofore called or held for the issuance of county hospital bonds and all elections heretofore held for levying and collecting annually an ad valorem tax for the special purpose of maintaining county hospitals, which could have been held under the provisions of this article had the same then been in effect and operation, are hereby ratified, approved and confirmed, and all county hospital bonds heretofore issued pursuant to any such election are hereby ratified, approved and confirmed. (1945, c. 506, s. 22.)

Art. 2B. County-City Hospital Facilities for the Poor.

§ 131-28.23. Counties authorized to provide facilities in conjunction with certain cities.—Authority is hereby granted to the board of commissioners of any county in the state now or hereafter having a population of one hundred thousand or over and a city within its borders now or hereafter having population of seventy-five thousand or over to provide adequate hospital facilities for the care of the sick and afflicted poor of such county. The exercise of the authority hereby granted through the contracts herein referred to, and the appropriations and taxes for the construction, installation, and maintenance of such facilities are hereby declared to be for necessary expenses and for a special purpose within the meaning of the constitution of North Carolina and for which the special approval of the general assembly of North Carolina is hereby given, and shall be valid and binding without a vote of the majority of the qualified voters of the county, and are expressly exempted and excepted from any limita-

tion, condition or restriction prescribed by the county fiscal control act and acts amendatory thereof. The full faith and credit of any such county shall be deemed to be pledged for the payment of the amounts due under said contracts and the special approval of the general assembly of North Carolina is hereby given to the execution thereof and to the levy of a special ad valorem tax not to exceed ten cents (10c) on the one hundred dollars (\$100.00) value of property, in addition to other taxes for general purposes authorized by law, for the special purpose of the payment of the amounts to become due thereunder. The board of aldermen of any such city is also authorized to levy, for the purposes herein provided, a special ad valorem tax not to exceed ten cents (10c) on the one hundred dollars (\$100.00) value of property, in addition to other taxes for general purposes authorized by law. The term "board of aldermen," as used in this article, shall be deemed to include any governing body of any municipality coming within the provisions of this article by whatever name designated. (1945, c. 516, s. 1.)

§ 131-28.24. Agreement between governing bodies upon plan of hospital care.—The authority hereby granted shall be exercised only by agreement between the board of commissioners of the county and the board of aldermen of the city upon a plan of hospital care for the sick and afflicted poor of the county as herein provided. Such plan shall be embodied in a resolution, adopted by a majority vote of each board before becoming effective, and may be enlarged, diminished or altered from time to time by a majority vote of each board not inconsistent herewith. The plan shall provide for (a) the time when it shall become effective, (b) the election of a city-county hospital commission to administer the hospitals covered by the plan, (c) the respective financial obligations of the county and the city with respect to the construction of any hospitals covered by the plan and the operation of any hospitals covered by the plan, and (d) such other arrangements, provisions, and details as may be deemed necessary, requisite or proper to provide adequate hospital facilities for the sick and afflicted poor of the county. (1945, c. 516, s. 2.)

§ 131-28.25. Powers and regulations; inclusion of municipal hospital within plan; limitations on payments by county.—If the governing bodies of any such county and city deem it advisable to include within the plan any existing municipal hospital or any new hospital which the city proposes to erect with the proceeds of a bond issue approved by the registered voters thereof, then in that event, the commissioners of such county are authorized to contract with the city for the construction of additional hospital facilities, over and above those to be paid for by the city with the funds derived from such bond issue and from other sources, for the hospitalization of the sick and afflicted poor of the county upon such terms and conditions as may be agreed upon and embodied in said plan by the governing bodies of the county and the city, provided the annual payments by the county to the city toward the cost of constructing such additional hospital facilities shall not exceed fifteen per cent of the total

cost thereof, and provided further that the annual deficit, if any, in the operation of such hospital or in the operation of any other hospital covered by the plan for the treatment of the sick and afflicted poor of the county shall be borne and paid by the city and county in such proportion as may be agreed upon by their governing bodies. In no event shall the annual payment of the city exceed two thirds of such annual deficit. In the event a new hospital is constructed as hereinbefore provided, it shall be located within the corporate limits of the city, and the name of the hospital and the site selected and all contracts for the construction thereof shall be approved by a majority vote of the governing boards of the city and county meeting in joint session, each body voting as a unit, but in the event of disagreement the majority vote of the board of aldermen of the city shall prevail. One third of all beds in the hospitals covered by the plan shall be reserved for the treatment of the indigent sick. (1945, c. 516, s. 3.)

§ 131-28.26. City-county hospital commission.

—Following the adoption of the agreement covering a plan of hospitalization for the sick and afflicted poor of the county, the county commissioners and the governing board of the city shall meet in a joint session in the county court house and elect a city-county hospital commission, to be composed of nine members, six of whom shall be residents of the city and three of whom shall be residents of other sections of the county. Three members of the commission shall be elected to serve for a term of two years, three for a term of four years, and three for a term of six years, and thereafter three members shall be elected biennially for a term of six years. Vacancies from any cause shall be filled by the two governing bodies meeting in joint session.

The mayor of the participating city shall be chairman and the chairman of the board of commissioners of the county shall be vice chairman. At the first meeting, the commission shall elect a secretary who need not be a member of the commission. The commission shall meet at least once a month and special meetings may be called by the chairman at such other times as he may designate. It shall be the duty of the chairman to call a special meeting of the commission upon written request of a majority of the members thereof. The secretary shall keep written minutes of all meetings of the commission and report to the governing bodies. The members of the commission shall serve without compensation.

The city-county hospital commission shall make recommendations to the county commissioners of the county and the board of aldermen of the city regarding the operation of any hospital covered by the city-county hospital plan or system and shall discharge such other duties as the county commissioners of the county and the board of aldermen may impose upon the commission. In addition, such commission shall have all powers and discharge all duties now vested in any hospital commission of any such city by the ordinances or charter thereof not inconsistent herewith.

Not later than June first of each year the city-county hospital commission shall prepare and submit to the governing bodies of the county and

city a proposed budget for the operation and maintenance of each hospital covered by the plan agreed upon by the governing bodies of the city and county. On or before June fifteenth of each year, the county commissioners and the board of aldermen shall adopt in a joint meeting the budget under which the several hospitals covered by the plan shall operate during the next fiscal year. (1945, c. 516, s. 4.)

§ 131-28.27. Superintendent of hospitals.—At a joint meeting of the board of commissioners and the board of aldermen, at which the city-county hospital commission is elected, there shall also be elected a superintendent of hospitals to serve for a term of twelve months. The compensation of the superintendent and of the personnel of the several hospitals covered by the plan shall be fixed by the commissioners of the county and the board of aldermen of the city in a joint meeting. The superintendent shall be subject to removal by the commissioners and by the board of aldermen at will in joint meeting, provided two thirds of the membership of both boards vote in favor of such removal.

The superintendent of hospitals shall have supervision of the operation of the hospitals covered by the plan and shall have the powers now prescribed by the ordinances of the city and he shall likewise enforce all rules and regulations prescribed by the governing bodies of the county and the city. (1945, c. 516, s. 5.)

§ 131-28.28. Revenue.—The board of commissioners of the county and the board of aldermen of the city are hereby respectively authorized and empowered to levy a tax on property in addition to other taxes for general purposes, not to exceed ten cents (10c) on the one hundred dollars (\$100.00) value of property annually, to provide hospital care for the sick and afflicted poor of the county and the city. All revenue so derived shall be carried by each governing body as a separate fund and expenditures for such purpose shall be charged respectively against such fund. Other revenues received from the operation of the hospitals covered by the plan shall be carried in the same funds. The funds of the county and the city for the operation and maintenance of such hospital facilities shall be applied by the governing bodies toward the payment of any annual deficit arising from the treatment of the sick and afflicted poor in any of the hospitals covered by the plan agreed upon by the governing bodies, subject to the limitations hereinbefore provided, and shall be disbursed by the finance officer of the city on vouchers approved by the superintendent of hospitals, provided appropriations for such expenditures have been made and a sufficient balance is available. All purchases shall be made through the purchasing department of the city. The portion of the funds charged to the county shall be paid not later than thirty days from the close of each fiscal year to the finance officer of the city, to be applied as hereinbefore provided.

The governing bodies of the county and city meeting in joint session shall set aside each year out of the hospital plan revenues a sum not to exceed ten per cent of the original cost of the hospital plants covered by the plan, including land, buildings and equipment, for future expansion and modernization of building and appurtenances,

the funds so set aside to be deposited with the sinking fund commission of the city and kept separate by it from other funds handled by it, and the investments of such funds to be governed by the laws pertaining to the city sinking funds. The expenditure of all or any part of said accumulated funds shall be made upon recommendation of the city-county hospital commission to both governing bodies, meeting in joint session.

In anticipation of the annual payments to be made by the county toward the cost of constructing the additional facilities hereinbefore referred to, the city is authorized to advance such additional funds and if necessary to issue its short-term securities for that purpose. If such short-term securities are issued by the city, interest thereon shall be paid by the county. (1945, c. 516, s. 6.)

Art. 3. County Tuberculosis Hospitals.

§ 131-31. Board of managers; term of office; compensation.

Local Modification.—Guilford: 1945, c. 135; Wake: 1951, c. 1037, s. 1.

Art. 11. Sanatorium for Tubercular Prisoners.

§ 131-88. Guarding and disciplining of prisoners.—The prison division of the state highway and public works commission shall have the same powers, duties and responsibilities in the guarding and disciplining of tubercular prisoners or convicts as it now has as to other prisoners and inmates under its supervision and control. (1923, c. 127, s. 6; 1949, c. 1136; C. S. 7220(e).)

Editor's Note.—The 1949 amendment rewrote this section.

§ 131-89. Feeding prison staff; medical and dietetic treatment and care of convicts.—The North Carolina sanatorium for the treatment of tuberculosis shall provide food for the prison staff and have the same duties and responsibilities in providing medical and dietetic treatment and care of the inmates of said sanatorium for the treatment of tubercular prisoners or convicts as it had prior to the passage of this section. (1923, c. 127, s. 1; 1949, c. 1136; C. S. 7220(f).)

Editor's Note.—This section as rewritten by the 1949 amendment was passed on April 22, 1949.

Art. 12. Hospital Authorities Law.

§ 131-90. Short title.

For comment on this article, see 21 N. C. Law Rev. 354.

§ 131-116. Article controlling.

Local Modification.—Wayne and city of Goldsboro: 1947, c. 969.

§ 131-116.1. Article applicable to city of High Point.—All the provisions of this article shall apply to the city of High Point, Guilford county, North Carolina, as fully as if the population of such city exceeded seventy-five thousand (75,000) inhabitants. (1947, c. 349.)

Art. 13. Medical Care Commission and Program of Hospital Care.

§ 131-117. North Carolina medical care commission.—There is hereby created a state agency to be known as "The North Carolina medical care commission," which shall be composed of twenty members nominated and appointed as follows:

Three members shall be nominated by the med-

ical society of the state of North Carolina; one member by the North Carolina hospital association; one member by the North Carolina dental society; one member by the North Carolina nurses' association; one member by the North Carolina pharmaceutical association, and one member by the Duke foundation, for appointment by the governor.

Ten members of said commission shall be appointed by the governor and selected so as to fairly represent agriculture, industry, labor, and other interests and groups in North Carolina. In appointing the members of said commission, the governor shall designate the term for which each member is appointed. Four of said members shall be appointed for a term of one year; four for a term of two years; four for a term of three years; five for a term of four years; and thereafter, all appointments shall be for a term of four years. All vacancies shall be filled by the governor for the unexpired term. The commissioner of public welfare, and the secretary of the state board of health shall be ex officio members of the commission, without voting power.

The commission shall elect, with the approval of the governor, a chairman and a vice chairman. All members, except the commissioner of public welfare, and the secretary of the state board of health shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses. (1945, c. 1096.)

§ 131-118. Commission authorized to employ executive secretary.—The North Carolina medical care commission is authorized and empowered to employ, subject to the approval of the governor, an executive secretary, and to determine his or her salary under the provisions of the personnel act. The executive secretary may employ such additional persons as may be required to carry out the provisions of this article, subject to approval of the commission, and the provisions of the personnel act. Office space for the commission shall be provided by the board of public buildings and grounds, in Raleigh. (1945, c. 1096.)

§ 131-119. Contribution for indigent patients.—The North Carolina medical care commission, in accordance with rules and regulations promulgated by the commission, is hereby authorized and empowered to contribute not exceeding one dollar and fifty cents (\$1.50) per day for each indigent patient hospitalized in any hospital approved by it, excluding patients eligible for payments for medical care in behalf of needy aged individuals, in behalf of a dependent child or dependent children and in behalf of the permanently and totally disabled. The balance of the costs remaining after the contribution made by the North Carolina medical care commission may be provided by the county or city having responsibility for the care of such indigent patient, or from other sources. The commission shall promulgate rules and regulations for determining the indigency of the persons hospitalized and the basis upon which hospitals and health centers shall qualify to receive the benefits of this section.

For the purpose of carrying out the provisions of this section, there is hereby appropriated from the general fund to the North Carolina medical care commission for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six.

the sum of five hundred thousand dollars (\$500,000.00); and for the fiscal year ending June thirtieth, one thousand nine hundred and forty-seven, the sum of five hundred thousand dollars (\$500,000.00), provided that the benefits of this section shall apply only to hospitals publicly owned, or operated by charitable, non-profit, non-stock corporations, and on and after July 1st, 1949, the benefits of this section shall apply only to hospitals publicly owned, or owned and operated by charitable, non-profit, non-stock corporations, and to such privately owned and operated hospitals as may be approved by the North Carolina medical care commission; and provided further that these appropriations provided in this section shall not be available until all provisions of section twenty-three and one half of the committee substitute for house bill number eleven, the general appropriations bill of one thousand nine hundred and forty-five, relating to the emergency salary for the public school teachers and state employees shall have been completely and fully provided for. (1945, c. 1096; 1947, c. 933, s. 1; 1951, c. 389; c. 1098, s. 1.)

Editor's Note.—The 1947 amendment struck out the words "owned and" formerly appearing before the word "operated" in line twelve of the second paragraph. It also inserted in said paragraph the provision as to benefits on and after July 1, 1949.

The first 1951 amendment inserted in the second paragraph the words "and to such privately owned and operated hospitals as may be approved by the North Carolina Medical Care Commission." The second 1951 amendment rewrote the first sentence.

§ 131-120. Construction and enlargement of local hospitals.—The North Carolina medical care commission is hereby authorized and empowered to begin immediate surveys of each county in the state to determine:

- (a) The hospital needs of the county or area;
- (b) The economic ability of the county or area to support adequate hospital service;
- (c) What assistance by the state, if any, is necessary to supplement all other available funds, to finance the construction of new hospitals and health centers, additions to existing hospitals and health centers, and necessary equipment to provide adequate hospital service for the citizens of the county or area; and to report this information, together with its recommendations, to the governor, who shall transmit this report to the next session of the general assembly for such legislative action as it may deem necessary to effectuate an adequate state-wide hospital program.

The North Carolina medical care commission is hereby authorized and empowered to act as the agency of the state of North Carolina for the purpose of setting up and administering any state-wide plan for the construction and maintenance of hospitals, public health centers and related facilities, and to receive and administer any funds which may be provided by the general assembly of North Carolina and/or by the congress of the United States for such purpose; and the commission, as such agency of the state of North Carolina with the advice of the state advisory council set up as hereinafter provided, shall have the right to promulgate such state-wide plans for the construction and maintenance of hospitals, medical centers and related facilities, or such other plans as may be found desirable and necessary in order to meet the requirements and receive the

benefits of any federal legislation with regard thereto. The said commission shall be authorized to receive and administer any funds which may be appropriated by any act of congress or of the general assembly of North Carolina for the construction of hospitals, medical centers and related activities or facilities, which may at any time in the future become available for such purposes; said commission shall be further authorized to receive and administer any other federal funds, or state funds, which may be available, in the furtherance of any activity in which the commission is authorized and empowered to engage in under the provisions of this article establishing said commission, and in connection therewith the commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of this article; to adopt such reasonable and necessary standards with reference thereto as may be proper to fully cooperate with the surgeon general or other agency or department of the United States with the approval of the federal advisory council in the use of funds provided by the federal government, and at all times make such reports and give such information to the surgeon general or other agency or department of the United States as may be required.

The governor is hereby authorized and empowered to set up and establish a state advisory council to the North Carolina medical care commission, to consist of five members, who shall each serve for a term of four years, with the right on the part of the governor to fill vacancies for unexpired terms, said council to include representatives of non-government organizations or groups, and of state agencies, concerned with the operation, construction, or utilization of hospitals or medical centers, or allied facilities, which advisory council, when set up by the governor, shall advise with the North Carolina medical care commission with respect to carrying out the purposes and provisions of this article. The members of the state advisory council to the North Carolina medical care commission shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses except that this shall not apply to members of the state advisory council to the North Carolina medical care commission who are representatives of a state agency or department and who receive a regular salary paid by appropriations to their agency or department; but such representatives of such state agencies or departments shall be entitled to necessary subsistence and travel expenses.

The North Carolina medical care commission and the said state advisory council set up by the governor as herein authorized, shall be fully authorized and empowered to do all such acts and things as may be necessary, to authorize the state of North Carolina to receive the full benefits of any federal laws which are or may be enacted for the construction and maintenance of hospitals, health centers or allied facilities.

Out of the funds appropriated and made available by the state, the North Carolina medical care commission shall make grants-in-aid to counties, cities, towns and subdivisions of government to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities

which have been or may be acquired by such municipalities or subdivisions of government for use as community hospitals. The appropriations and funds made available by the state shall be allocated, apportioned and granted for the purposes above set forth and for such other related objects or purposes as shall be determined in each case by the North Carolina medical care commission in accordance with the standards, rules and regulations as determined, adopted and promulgated by the North Carolina medical care commission. The North Carolina medical care commission may furnish financial and other types of aid and assistance to any non-profit hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, upon the same terms and conditions as such aid and financial assistance is granted to municipalities and subdivisions of government: Provided, that hospitals now in the course of construction and approved by the North Carolina medical care commission and the appropriate federal authority shall be entitled to receive financial assistance on the same basis as any hospital of the same classification and type that may be hereafter constructed and approved by the North Carolina medical care commission and the appropriate federal authority.

Out of funds that may be made available to the North Carolina medical care commission on or after July 1, 1951, by federal grants in aid or out of funds so made available by virtue of an Act of the Congress of the United States popularly referred to as the Hill-Burton Act or out of funds made available by any other federal act, and consistent with and in conformity with said Hill-Burton Act, or any other federal act by which said funds may be made available to said commission, the North Carolina medical care commission shall appropriate, pay over to and make available to the North Carolina sanatorium for the treatment of tuberculosis any sum that may be necessary not exceeding five hundred thousand dollars (\$500,000.00) to supplement the appropriation heretofore made by the State of North Carolina for the building, construction, furnishing and equipping of a new unit which shall be used, governed and operated in accordance with plans to be agreed upon by the North Carolina sanatorium for the treatment of tuberculosis and the University of North Carolina to the end that services may be rendered for the diagnosis and treatment of tuberculosis and other respiratory and related diseases.

The North Carolina medical care commission may make available to any eligible hospital, sanatorium, clinic, or other medical facilities for the treatment of disease operated by the State of North Carolina or under its direction and control, or under the direction and control of any of its agencies or institutions, any unallocated federal sums or balances remaining after all grants in aid for local approvable projects made by the said commission have been completed, disbursed or enumerated for all objects for which such grants in aid are available and for which said unallocated balances remain. (1945, c. 1096; 1947, c. 933, ss. 1, 5; 1949, c. 592; 1951, c. 1183, s. 1.)

Editor's Note.—The 1947 amendment added to the third 3 N. C.—13

paragraph following "(c)" the sentence as to per diem and travel expenses. It also rewrote the last paragraph.

The 1949 amendment rewrote the second paragraph of subsection (c).

The 1951 amendment inserted the last two paragraphs.

§ 131-121. Medical and other students; loan fund.—The North Carolina medical care commission is hereby authorized and empowered, in accordance with such rules as it may promulgate, to make loans to students who may wish to become physicians, dentists, pharmacists, or nurses and who are accepted for enrollment in any standard school or college giving approved courses in medicine, dentistry, pharmacy or nursing, and is approved by the commission provided such student or students shall agree, that upon graduation and being duly licensed, to practice medicine, dentistry, pharmacy or nursing in some rural area of North Carolina for at least four years. Rural area, for the purpose of this section, shall mean any town or village having less than 2,500 population according to the last decennial census, or area outside and around such towns or villages. Such loans shall bear such rate of interest as may be fixed by the commission, not to exceed four per cent (4%) per annum.

For the purpose of carrying out the provisions of this section, there is hereby appropriated from the general fund for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, to the North Carolina medical care commission the sum of fifty thousand dollars (\$50,000.00). The state treasurer shall set up on his records an account to which shall be deposited said amount, and from which withdrawals shall be made upon vouchers made by the state auditor upon request of the North Carolina medical care commission. This appropriation shall not lapse at the end of any biennium, but shall remain available for the purposes herein stated.

The North Carolina medical care commission is hereby authorized and empowered to establish and promulgate rules and regulations fixing fair and reasonable standards, systems and plans whereby physicians, dentists, pharmacists, and nurses receiving loans under this section shall receive a credit on the principal and/or interest of such loan in an amount fixed by such commission for each year, or other period of time as fixed by regulation, of practicing his or her profession in a rural area as defined in this section. (1945, c. 1096; 1947, c. 933, s. 2; 1949, c. 1019.)

Editor's Note.—The 1947 amendment rewrote the first paragraph to make it applicable to students who may wish to become dentists, pharmacists or nurses.

The 1949 amendment added the last paragraph.

§ 131-122. Expansion of medical school of the University of North Carolina.—In order to carry forward the state-wide plan of hospital and medical care, the board of trustees of the University of North Carolina, by and with the approval of the governor and the North Carolina medical care commission is hereby authorized and empowered to expand the two-year medical school of the University of North Carolina into a standard four-year medical school. The North Carolina medical care commission is authorized and directed to make a complete survey of all factors involved in determining the location of the expanded medical school, giving especial attention to the advantages and disadvantages of locating said school in one

of the large cities of the state, and shall render a report of their findings to the governor and board of trustees of the University of North Carolina.

Provided that no action shall be taken under this provision of this section, other than the work of the commission, until a survey has been made and a report submitted to the governor and medical care commission by the Rockefeller Foundation or some other accredited agency with experience in the field of surveying large areas in connection with medical education and medical care. The report of such agency is to be submitted to the governor and the medical care commission in a reasonable time in advance of the report of the governor and the commission to the board of trustees. (1945, c. 1096.)

§ 131-123. Appropriations for expenses of the North Carolina medical care commission.—In order to provide funds for the expenses of the North Carolina medical care commission, there is hereby appropriated from the general fund for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, the sum of fifty thousand dollars (\$50,000.00) and for the fiscal year ending June thirtieth, one thousand nine hundred and forty-seven, the sum of fifty thousand dollars (\$50,000.00). (1945, c. 1096.)

§ 131-124. Medical training for negroes.—The North Carolina medical care commission shall make careful investigation of the methods for providing necessary medical training for negro students, and shall report its findings to the next session of the general assembly. In addition to the benefits provided by § 116-110, the North Carolina medical care commission is hereby authorized to make loans to negro medical students from the fund provided in § 131-121, subject to such rules, regulations, and conditions as the commission may prescribe. (1945, c. 1096.)

§ 131-125. Acceptance of gifts, grants and donations.—The North Carolina medical care commission is hereby authorized and empowered to accept and administer gifts, grants, or donations which may be made by the federal government or by any person, firm, or corporation for the purpose of carrying out the objects of this article, provided the acceptance of such gifts, grants, or donations shall be made without requiring the surrender of authority or control in the administration thereof by the North Carolina medical care commission. (1945, c. 1096.)

§ 131-126. Hospital care associations.—The North Carolina medical care commission is hereby authorized to encourage the development of group insurance plans, the blue cross plan, and other plans which provide for insurance for the public against the costs of disease and illness. (1945, c. 1096.)

Art. 13A. Hospital Licensing Act.

§ 131-126.1. Definitions.—As used in this article:

(a) "Hospital" means an institution devoted primarily to the rendering of medical, surgical, obstetrical, or nursing care, which maintains and operates facilities for the diagnosis, treatment or care of two or more nonrelated individuals suffering from illness, injury or deformity, or where obstetrical or other medical or nursing care is

rendered over a period exceeding twenty-four hours.

The term "hospital" for clarification purposes, includes, but not by way of limitation, an institution that receives patients and renders for them diagnostic, medical, surgical and nursing care; and "hospital" means also an allied institution that provides for patients diagnostic, medical, surgical and nursing care in branches of medicine such as obstetric, pediatric, orthopedic, and eye, ear, nose, and throat and cardiac services, and in the diagnosis and treatment of mental and neurological ailments, and in the diagnosis and treatment and care of chronic diseases and transmissible diseases.

The term "hospital" as used in this article does not apply to a welfare institution, the primary purpose of which is to provide domiciliary and/or custodial care to its residents, and it does not apply to an infirmary which such institution may maintain to provide medical and nursing care for its residents.

Further to distinguish a "hospital" from a "welfare institution," as the term is used in this article, the latter means orphanages; penal and correctional institutions; homes for the county or city poor, aged, and infirm; nursing homes for the mentally and physically infirm; homes for the aged; and convalescent and rest homes; and homes for pregnant women who require public assistance and/or custodial care or obstetrical and nursing care in such home, or nursing care prior to or subsequent to delivery in a "hospital".

(b) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof.

(c) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

(d) "Commission" means the North Carolina medical care commission as established by chapter 1096 of the Session Laws of 1945, as amended, and as the same may be hereafter amended. (1947, c. 933, s. 6; 1949, c. 920, s. 1.)

Editor's Note.—The 1949 amendment rewrote subsection (a). →

§ 131-126.2. Purpose.—The purpose of this article is to provide for the development, establishment and enforcement of basic standards

(1) for the care and treatment of individuals in hospitals and

(2) for the construction, maintenance and operation of such hospitals, which, in the light of existing knowledge, will ensure safe and adequate treatment of such individuals in hospitals, provided, that nothing in this article shall be construed as repealing any of the provisions of article 27 of chapter 130 of the General Statutes of North Carolina. (1947, c. 933, s. 6.)

§ 131-126.3. Licensure.—After July 1st, 1947, no person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this state without a license. (1947, c. 933, s. 6.)

§ 131-126.4. Application for license.—Licenses shall be obtained from the commission. Applications shall be upon such forms and shall contain

such information as the said commission may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as may be lawfully prescribed hereunder. (1947, c. 933, s. 6; 1949, c. 920, s. 3.)

Editor's Note.—The 1949 amendment struck out the former last sentence relating to license fee accompanying application.

§ 131-126.5. Issuance and renewal of license.—

Upon receipt of an application for license, the commission shall issue a license if it finds that the applicant and hospital facilities comply with the provisions of this article and the regulations of the said commission. Each such license, unless sooner suspended or revoked, shall be renewable annually without charge upon filing of the license, and approval by the commission, of an annual report upon such uniform dates and containing such information in such form as the commission shall prescribe by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the commission. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the said commission. (1947, c. 933, s. 6; 1949, c. 920, s. 4.)

Editor's Note.—The 1949 amendment struck out the words "and the license fee" formerly appearing after the word "license" in line one.

§ 131-126.6. Denial or revocation of license;

hearings and review.—The commission shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this article or the rules, regulations or minimum standards promulgated under this article.

Such denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period shall give written notice to the commission requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the commission. At any time at or prior to the hearing, the commission may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee the determination involved in the notice may be affirmed, modified, or set aside, by the commission. A copy of such decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by registered mail, or served personally upon, the applicant or licensee. The decision shall become final thirty days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision to the court, pursuant to § 131-126.14 hereof.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by said commission with the advice

of the hospital advisory council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to § 131-126.14 hereof. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules. (1947, c. 933, s. 6.)

§ 131-126.7. Rules, regulations and enforcement.

—The commission with the advice of the hospital advisory council, shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to the different types of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of the article. (1947, c. 933, s. 6.)

§ 131-126.8. Effective date of regulations.—

Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this article shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and regulations and minimum standards. (1947, c. 933, s. 6.)

§ 131-126.9. Inspections and consultations. —

The commission shall make or cause to be made such inspections as it may deem necessary. The commission may delegate to any state officer, agent, board, bureau or division of state government authority to make such inspections as the commission may designate and according to rules and regulations promulgated by the commission. The commission may revoke such delegated authority in its discretion and make its own inspections according to the powers granted hereunder. The commission may prescribe by regulations that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the commission for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. (1947, c. 933, s. 6.)

§ 131-126.10. Hospital advisory council.—

The commission may appoint a hospital advisory council which shall consist of the executive secretary of the commission who shall serve as chairman ex officio, the commissioner of the state board of public welfare, ex officio, the state health officer, ex officio, the superintendent of mental hygiene, ex officio, and the following: One or more individuals of recognized ability in the field of hospital administration; one or more individuals of recognized ability in the fields of medicine and surgery, nursing, welfare, public health, architecture, or allied professions in the field of health; one or more individuals with broad civic interests representing consumers of hospital services.

In each of these three aforesaid groups, members shall be appointed for terms of one, two, three and four years respectively, and their successors shall be appointed for terms of four years, except when appointed to complete an unexpired term. Members whose terms expire shall hold

office until appointment of their successors. The members of the hospital advisory council to the North Carolina medical care commission shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses except that this shall not apply to members of the hospital advisory council who are representatives of a state agency or department and who receive a regular salary paid by appropriations to their agency or department; but such representatives of such state agencies or departments shall be entitled to necessary subsistence and travel expenses. (1947, c. 933, s. 6.)

§ 131-126.11. Functions of hospital advisory council.—The hospital advisory council shall have the following responsibilities and duties:

(a) To consult and advise with the commission in matters of policy affecting administration of this article, and in the development of rules, regulations and standards provided for hereunder.

(b) To review and make recommendations with respect to rules, regulations and standards authorized hereunder prior to their promulgation by the commission as specified herein. The council shall meet not less than once each year, and additionally at the call of the chairman or at the request of any five of its members. (1947, c. 933, s. 6.)

§ 131-126.12. Information confidential.—Information received by the commission through filed reports, inspection, or as otherwise authorized under this article, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure or the denial, suspension or revocation of a license. (1947, c. 933, s. 6.)

§ 131-126.13. Annual report of commission.—The commission shall prepare and publish an annual report of its activities and operations under this article. (1947, c. 933, s. 6.)

§ 131-126.14. Judicial review.—Any applicant or licensee who is dissatisfied with the decision of the commission as a result of the hearing provided in § 131-126.6 may, within thirty (30) days after the mailing or serving of notice of the decision as provided in said section, file a notice of appeal to the superior court in the office of the clerk of the superior court of the county in which the hospital is located or to be located, and serve a copy of said notice of appeal upon the commission. Thereupon the commission shall promptly certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Findings of fact by the commission shall be conclusive unless contrary to the weight of the evidence but upon good cause shown the court may remand the case to the commission to take further evidence, and the commission may thereupon make new or modified findings of facts or decision. The court shall have power to affirm, modify or reverse the decision of the commission and either the applicant or licensee or the commission may appeal to the supreme court. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court shall otherwise order in the public interest. (1947, c. 933, s. 6.)

§ 131-126.15. Penalties.—Any person establishing, conducting, managing, or operating any hos-

pital without a license shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense. (1947, c. 933, s. 6.)

§ 131-126.16. Injunction.—Notwithstanding the existence or pursuit of any other remedy, the commission may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license. (1947, c. 933, s. 6.)

§ 131-126.17. Article not applicable to §§ 122-72 to 122-75.—The provisions of this article shall not apply to §§ 122-72 through 122-75, inclusive, of the General Statutes, which give to the state board of public welfare, in addition to other responsibilities, authority to license privately owned and operated hospitals for the mentally disordered. (1947, c. 933, s. 6; 1949, c. 920, s. 2.)

Editor's Note.—The 1949 amendment rewrote this section.

Art. 13B. Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

§ 131-126.18. Definitions.—As used in this article: (a) "Municipality" means any county, city, town or other political subdivision of this state, or any hospital district created pursuant to article 13C of chapter 131 of the General Statutes.

(b) "Municipal" means pertaining to a municipality as herein defined.

(c) "Hospital facility" means any type of hospital, clinic or public health center, housing or quarters for local public health departments, including relating facilities such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals.

(d) "Non-profit association" means any corporation or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

(e) "Governing authority of hospital district" means the board of county commissioners of any county in which there is located wholly within the boundaries of the county a hospital district created under the provisions of article 13C of chapter 131 of the General Statutes. (1947, c. 933, s. 6; 1949, c. 766, ss. 1, 2, 4.)

Editor's Note.—The 1949 amendment added at the end of subsection (a) the words "or any hospital district created pursuant to article 13C of chapter 131 of the General Statutes." It inserted in subsection (c) the words "housing or quarters for local public health departments." It also added subsection (e).

Use of Funds for Hospital "Buildings."—Where the resolution of the county commissioners in submitting to a vote the question of issuing bonds for a public hospital uses the word "buildings," and it is later found that a surplus will remain after the erection and equipment of the main hospital building, such surplus may be used for the purpose of erecting on the hospital grounds a home for nurses, technicians and others engaged in essential employment incidental to the proper operation of the hospital. *Worley v. Johnston County*, 231 N. C. 592, 58 S. E. (2d) 99.

§ 131-126.19. Purpose.—It is the purpose of this article to confer additional authority upon municipalities for the furnishing of hospital, clinic and

similar services to the people of this state, through the construction, operation, and maintenance of hospital facilities and otherwise; and to this end to authorize municipalities to cooperate with other public and private agencies and with each other, and to accept assistance from agencies of this state or the federal government or from other sources. This article shall be liberally construed to effect these purposes. (1947, c. 933, s. 6.)

§ 131-126.20. General powers of municipalities in the construction, acquisition, operation and maintenance of hospital facilities.—(a) In addition to authority provided by existing laws, every municipality is authorized, out of any appropriations or other moneys made available for such purposes, to construct, operate, and maintain hospital facilities. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, grant, gift, devise, lease, condemnation or otherwise, acquire real or personal property or any interest therein. The municipality may make reasonable charges for the use of any such hospital facilities or may make them available without charge to such classes of persons as it considers necessary or desirable to carry out the purposes of this article.

(b) Any municipality may, by purchase, gift, devise, lease, condemnation or otherwise, acquire any existing hospital facilities.

(c) Any municipality may enter into a contract or other arrangement with any other municipality or other public agency of this or any other state or of the United States or with any individual, private organization or non-profit association for the provision of hospital, clinic, or similar services. Pursuant to such contract or other arrangement, the municipality may pay for such services out of any appropriations or other moneys made available for such purposes. A municipality may lease any hospital facilities to any non-profit association on such terms and subject to such conditions as will carry out the purposes of this article. (1947, c. 933, s. 6.)

Stated in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696.

§ 131-126.21. Board of managers.—Any authority vested by this article in the municipality for the planning, establishment, construction, maintenance or operation of hospital facilities may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers, duties, compensation, and tenure shall be prescribed in the resolution; provided, however, that the expense of such planning, establishment, construction, maintenance or operation shall be a responsibility of the municipality. (1947, c. 933, s. 6.)

Cited in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696.

§ 131-126.22. Appropriations and taxation.—(a) The governing body of any municipality having power to appropriate and raise money is hereby authorized to appropriate and to raise by taxation and otherwise sufficient moneys to carry out the provisions and purposes of this article.

(b) Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing

body of a municipality for the special purposes of this article, for which special approval is hereby given, provided that the levy of such taxes shall be approved by the vote of a majority of the qualified voters of such municipality who shall vote on the question of levying such taxes in an election held for such purpose. Such election as to counties may be held at the same time and in the same manner as elections held under the provisions of article 9 of chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with § 153-69 of the General Statutes and sections following, or such election as to cities and towns may be held under the Municipal Finance Act, the same being article 28 of chapter 160 of the General Statutes, beginning with § 160-377 of the General Statutes and sections following, or said elections may be held at any time fixed by the governing body of the municipality. (1947, c. 933, s. 6; 1949, c. 497, s. 5.)

Editor's Note.—The 1949 amendment, effective March 22, 1949, rewrote the proviso at the end of the first sentence of subsection (b). See § 153-92.1.

§ 131-126.23. Financing cost of construction, acquisition and improvement; bond issues.—(a) The cost of planning and acquiring, establishing, developing, constructing, enlarging, improving, or equipping any hospital facility or the site thereof may be paid for by appropriation of moneys available therefor or wholly or partly from the proceeds of the sale of bonds or other obligations of the municipality as the governing body of the municipality shall determine. For such purposes a county may issue general obligation bonds, as authorized by the County Finance Act, the same being article 9 of chapter 153 of the General Statutes and a city or town as authorized by the Municipal Finance Act, the same being subchapter III of chapter 160 of the General Statutes and consisting of articles 25, 26, 27, 28, 29, 30, 31 and 32 of chapter 160 of the General Statutes, and any municipality may issue revenue bonds as authorized by article 34 of chapter 160 of the General Statutes, the same being designated as the Revenue Bond Act of 1938.

(b) Notwithstanding any limitations provided by the constitution or by any general or special law as to the amount of bonds or obligations that may be issued, a municipality may issue bonds or obligations in excess of any such limitations for the purposes authorized by this article; provided, that such amount in excess of such constitutional limitation is referred to and approved by a majority of the qualified voters of said municipality voting in an election on such question.

(c) Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of a municipality for the purpose of financing the cost of operation, equipment and maintenance of any hospital facility authorized by this article; and the special approval of the general assembly is hereby given for the levying of taxes for such purposes; provided, that the levy of such taxes shall be approved by the vote of a majority of the qualified voters of such municipality who shall vote on the question of levying such taxes in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the governing body of the municipi-

pality; and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," and "Against Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," with squares in front of each proposition, in one of which squares the voter may make a cross mark (X); but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this subsection. Such election as to counties may be held at the same time and in the same manner as elections held under article 9 of chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with § 153-69 of the General Statutes and sections following, or such election as to cities and towns may be held under the Municipal Finance Act, the same being article 28 of chapter 160 of the General Statutes, beginning with § 160-377 of the General Statutes and sections following, or said elections may be held at any time fixed by the governing body of the municipality. The question of levying a tax for the operation and maintenance of hospital facilities as provided by this subsection may be submitted at the same time the question of issuing bonds is submitted as provided in this article or the question of a levy of taxes for operation and maintenance purposes may be submitted in a separate election according to the discretion and judgment of the governing body of the municipality. (1947, c. 933, s. 6; 1949, c. 497, s. 6.)

Editor's Note.—The 1949 amendment, effective March 22, 1949, rewrote the proviso at the end of the first sentence of subsection (c). See § 153.92.1. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

Quoted in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696.

§ 131-126.24. Condemnation.—In the condemnation of property authorized by this article, the municipality shall proceed in the manner provided in chapter 40 of the General Statutes of North Carolina, or the charter of the municipality. For the purpose of making surveys and examinations relative to any condemnation procedures, it shall be lawful to enter upon any land doing no unnecessary damage. Notwithstanding the provisions of any other statute or of any applicable municipal charter, the municipality may take possession of any property to be condemned at any time after commencement of the condemnation procedure. The municipality shall not be precluded from abandonment of the condemnation of any such property in any case where possession thereof has not been taken. (1947, c. 933, s. 6.)

§ 131-126.25. Federal and state aid.—(a) Every municipality or non-profit association is authorized to accept, receive, receipt for, disburse and expend federal and state moneys and other moneys, public or private, made available by grant, loan, gift or devise, to accomplish, in whole or in part, any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by a municipality or non-profit association upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the municipality or non-profit asso-

ciation upon such terms and conditions as are prescribed by the state and/or North Carolina medical care commission. Unless otherwise prescribed by the agency from which such moneys were received, the chief financial officer of the municipality shall, on its behalf, deposit all moneys received pursuant to this section and shall keep them in separate funds designated according to the purposes for which the moneys were made available, in trust for such purposes.

(b) Out of funds made available by the state, the North Carolina medical care commission shall make grants-in-aid, as provided in this subsection, to municipalities and/or non-profit associations to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities which have been or may be acquired by such municipalities and/or non-profit associations for use as community hospitals. The amount of state funds to be granted hereunder shall be determined in each case by the North Carolina medical care commission in accordance with standards, rules and regulations as determined by the North Carolina medical care commission.

Application for a grant under this subsection shall be made to the North Carolina medical care commission by any municipality, acting separately or with one or more other municipalities, or by any non-profit association, on such forms and in such manner as may be prescribed by the North Carolina medical care commission. The North Carolina medical care commission may establish such reasonable requirements for approval as it deems necessary or desirable to effectuate the purposes of this article. The North Carolina medical care commission shall give preference to applications in accordance with their priority in the hospital construction program established pursuant to the Federal Hospital Survey and Construction Act. (1947, c. 933, s. 6.)

§ 131-126.26. Municipal aid.—If the governing body of any municipality determines that the public interest and the interests of the municipality will be served by aiding another municipality or municipalities or a nonprofit association or non-profit associations to provide physical facilities for furnishing hospital, clinic, or similar services to the people of the municipality, such municipality may render such aid by gift of real or personal property, or lease or loan thereof with or without rental or charge, or by gift of money, or loan thereof with or without interest. For the purpose of raising money to be given or loaned as aforesaid, such municipality shall have power to levy taxes as provided in § 131-126.22 and to issue general obligation bonds as provided in § 131-126.23, as though such taxes were to be levied and such bonds were to be issued to finance hospital facilities owned by the municipality. No bonds shall be issued under this section, however, except for the construction of new buildings, the expansion, remodeling and alteration of existing buildings, and the equipment of buildings, or for one or more of said purposes. For the purpose of applying the provisions of the County Finance Act and the Municipal Finance Act to bonds authorized by this section, the bonds shall be deemed to be bonds issued to finance public buildings owned by the municipality issuing the bonds. The

special approval of the General Assembly is hereby given for the levying of the taxes authorized by this section, including taxes sufficient to pay the principal of and the interest on bonds issued under this section. The proceeds of the sale of such bonds may be expended by the municipality that issues them or by the municipality or municipalities or nonprofit association or nonprofit associations in aid of which the bonds are issued, as may be determined by the governing body of the municipality that issued the bonds. If any building for which bonds are issued under this section shall, prior to the final date of maturity of the bonds, cease for 90 days or more to be used for the purpose of furnishing hospital, clinic, or similar services to the people of the municipality that issued the bonds, or ceased to be owned by a municipality or a nonprofit association, the municipality that issued the bonds shall be entitled to recover from the owners of such building, or from their predecessors entitled since the date of the bonds issued for such building, the amount of such bonds remaining outstanding and unpaid. Such right of recovery shall, however, be subordinate to any claim of the United States on account of aid in financing such building. Any municipality that grants aid under this section may require assurance from the grantee that the grantee will furnish hospital, clinic, or similar services during a specified period to the people of the municipality that grants such aid. Such assurance may be given by lease, deed of trust, mortgage, contract to convey, lien, trust indenture, or other means. (1947, c. 933, s. 6; 1951, c. 1143, s. 1.)

Editor's Note.—The 1951 amendment rewrote this section.
Title to Hospital.—By virtue of this section the acquisition of title to a hospital by the county is not a condition precedent to the extension of aid by the municipality. Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696.

§ 131-126.27. Joint operations. — All powers, privileges and authority granted to any municipality by this article may be exercised and enjoyed jointly with any other municipality. To this end any two or more municipalities may enter into agreements with each other for the acquisition, construction, improvement, maintenance, or operation of hospital facilities. Such agreement may provide for:

(a) The appointment of a board, composed of representatives of the parties to the agreement, to supervise and manage such hospital facilities;

(b) The authority and duties of such board and the compensation of its members;

(c) The proportional share of the costs of acquisition, construction, improvement, maintenance, or operation of the hospital facilities and the provision of funds therefor;

(d) Duration, amendment, and termination of the agreement and the disposition of property on its termination; and

(e) Such other matters as are necessary or desirable in the premises. (1947, c. 933, s. 6.)

§ 131-126.28. Public purpose; county and municipal purpose.—The acquisition of any land or interest therein pursuant to this article, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, and regulation of hospital facilities and the exercise of any other powers herein granted to municipalities, to be severally or jointly exer-

cised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity; and in the case of any county, are declared to be county functions and purposes as well as public and governmental; and in the case of any municipalities other than a county, are declared to be municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any county or other municipality in the manner and for the purpose enumerated in this article shall and are hereby declared to be acquired and used for public and governmental purposes as a matter of public necessity, and for county or municipal purposes, respectively. (1947, c. 933, s. 6.)

§ 131-126.29. Implied incidental powers.—In addition to the general and special powers conferred by this article, every municipality is authorized to exercise such powers as are necessarily incidental to the exercises of such general and special powers. All powers granted by this article to municipalities are specifically declared to be granted to the counties of this state, any other statute to the contrary notwithstanding. (1947, c. 933, s. 6.)

§ 131-126.30. Short title.—This article may be cited as the "Municipal Hospital Facilities Act." (1947, c. 933, s. 6.)

Art. 13C. Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

§ 131-126.31. Petition for formation of hospital district; hearing.—Upon receipt of a petition signed by not less than one hundred citizens of the territory described in such petition, praying that such territory be created into a hospital district and that bonds and/or notes be issued under the provisions of this article, the North Carolina medical care commission, with the approval of the board of county commissioners of the county in which such proposed hospital district is located, shall cause notice to be given by posting at the courthouse door, and at three public places in such proposed hospital district, and by three weekly publications in a newspaper circulating in such proposed hospital district, that on a date to be named in such notice, which shall not be earlier than twenty days after the first posting and publication of such notice, it will hold a public hearing at a designated place within the proposed hospital district or some designated place within the county in which the district is to be created, upon the question of creating a hospital district comprising the territory described in such petition and set forth in such notice, and that any taxpayer or other interested person may appear and be heard at the time and place set forth in such notice. At the time and place set forth in such notice, the North Carolina medical care commission, or its duly authorized representative who shall be a member of said commission, shall hear all interested persons and may adjourn the hearing from time to time. (1949, c. 766, s. 5.)

§ 131-126.32. Result of hearing; name of district.—The North Carolina medical care commission may deny such petition, or it may grant such petition and enter an order creating a hospital district, comprising either the territory described

in such petition or a part of such territory and additional territory, and the order of the North Carolina medical care commission creating such hospital district shall define the boundaries thereof: Provided, however, that all the territory embraced in a new hospital district shall be located in one county. Each hospital district so created shall be designated by the North Carolina medical care commission as the "..... Hospital District of County," inserting in the blank spaces some name identifying the locality and the name of the county.

Before any petition has been filed requesting authorization to issue bonds or levy any tax as provided by this article, the North Carolina medical care commission is authorized and empowered to change or alter the boundary lines of any hospital district heretofore created for the purpose of excluding territory from such hospital district. The procedure for excluding territory from any hospital district shall be the same procedure provided in this article for the creation of a hospital district and as set forth in this section, as well as § 131-126.31. The petition shall show the boundaries of the territory to be excluded from such hospital district, and the North Carolina medical care commission, after hearing, may grant such petition and enter an order excluding such territory from any hospital district heretofore created, and such order shall define the boundaries of the territory excluded. (1949, c. 766, s. 5; 1951, c. 805.)

Editor's Note.—The 1951 amendment added the second paragraph.

§ 131-126.33. Election for bond issue; method of election.—Whenever five hundred or more adult residents of such hospital district shall file with the board of county commissioners of the county in which such hospital district is located a petition requesting an election, the board of county commissioners shall order a special election to be held in any such hospital district for the purpose of voting upon the question of issuing bonds and/or notes and levying a sufficient tax for the payment thereof for the purpose of and/or the cost of planning and acquiring, establishing, developing, constructing, enlarging, improving or equipping any type of hospital, clinic or public health center, including relating facilities such as laboratories, out-patient departments, nurses' homes and training facilities operated in connection with hospitals and purchasing sites in such district for any one or more of said purposes, including any public or non-profit hospital facility. In all such elections, the board of county commissioners of such county shall designate the polling place or places, appoint the registrars and judges, and canvass and judicially determine the results of the election upon filing with it of the election returns by the officers holding the election and shall record such determination on their records. The notice of election shall be given by publication at least three times in some newspaper published or circulating in such hospital district. The notice shall state the date of the election, the place or places at which the election will be held, the boundary lines of such hospital district unless the hospital district is coterminous with a township in said county (in which event the notice shall so state), the

maximum amount of bonds and/or notes to be issued, the purpose or purposes for which the bonds and/or notes are to be issued, and the fact that a sufficient tax will be levied on all taxable property within the hospital district for the payment of the principal and interest of the bonds and/or notes. The first publication of the notice shall be at least thirty days before the election. A new registration of the qualified voters of such hospital district shall be ordered and notice of such new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulating in such hospital district at least thirty days before the close of the registration books. This notice of registration may be considered one of three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of the voters and the place or places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day; and except as otherwise provided in this article, such election shall be held in accordance with the laws governing general elections. The form of the question, as stated on the ballot or ballots, shall be in substantially the words: "For the issuance of \$..... Hospital Bonds and/or Notes, or a description of any other purpose named in this article for which bonds and/or notes may be issued, and the levying of a sufficient tax for the payment thereof." Such affirmative and negative form may be printed upon separate ballots, or both thereof may be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a cross [X] mark. (1949, c. 766, s. 5.)

§ 131-126.34. Canvassing vote and determining results.—At the close of the polls, the election officers shall count the votes and make returns thereof to the board of county commissioners, which board shall, as soon as practicable after the election, judicially pass upon the returns and judicially determine and declare the results of such election, which determination shall be spread upon the minutes of said board. The returns shall be made in duplicate, one copy of which shall be delivered to the board of county commissioners as aforesaid and the other filed with the clerk of the superior court of the county in which the hospital district is situated. The board of county commissioners shall prepare a statement showing the number of votes cast for and against the bonds and/or notes, and declaring the result of the election, which statement shall be signed by the chairman of the board and attested by the clerk, who shall record it in the minutes of the board and file the original in his office and publish it once in a newspaper published or circulating in such hospital district. (1949, c. 766, s. 5.)

§ 131-126.35. Limitation of actions.—No right of action or defense founded upon the invalidity of such election or the invalidity of any proceedings or steps taken in the creation of such district or such unit shall be asserted, nor shall the validity of such election or the validity of the creation of such hospital district, or the right or

duty to levy sufficient tax for the payment of the principal and interest of such bonds and/or notes, be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of results as provided in the preceding section. (1949, c. 766, s. 5.)

§ 131-126.36. Issuance of bonds and levy of taxes.—If a majority of the votes cast shall be in favor of the issuance of such bonds and/or notes and the levy of such tax, then the board of county commissioners may provide by resolution, which resolution may be finally passed at the same meeting at which it is introduced, for the issuance of such bonds and/or notes, which bonds and/or notes shall be issued in the name of the county, but they shall be made payable exclusively out of taxes to be levied in such hospital district, except the board of county commissioners may pay from county funds any part of the principal and interest of said bonds and/or notes. They shall be issued in such form and denominations, and with such provisions as to the time, place and medium of payment of principal and interest as the said board of county commissioners may determine, subject to the limitations and restrictions of this article. They may be issued as one issue, or divided into two or more separate issues, and in either case may be issued at one time or in blocks from time to time. When bonds are to be issued, they shall be serial bonds and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No such installment shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. The bonds and/or notes shall bear interest at a rate not exceeding six per cent (6%) per annum, payable semi-annually, and may have interest coupons attached, and may be made registerable as to principal or as to both principal and interest, under such terms and conditions as may be prescribed by said board. They shall be signed by the chairman of the board of county commissioners, and the seal of the county shall be affixed to or impressed upon each bond and/or note and attested by the register of deeds of the county or by the clerk of said board; and the interest coupons shall bear the printed, lithographed or facsimile signature of such chairman. The delivery of bonds and/or notes, signed as aforesaid by officers in office at the time of such signing, shall be valid, notwithstanding any changes in office occurring after such signing. (1949, c. 766, s. 5.)

§ 131-126.37. Collection and application of tax.—The board of county commissioners is hereby authorized and directed to levy annually a special tax, ad valorem, on all taxable property in the hospital district in which the election was held, sufficient to pay the principal and interest of the bonds and/or notes as such principal and interest become due. Such special tax shall be in addition to all other taxes authorized to be levied in such district or in such unit. The taxes provided for in this section shall be collected by the county officer collecting other taxes and be applied solely

to the payment of principal and interest of such bonds and/or notes. (1949, c. 766, s. 5.)

§ 131-126.38. Tax levy for operation, equipment and maintenance.—Upon receipt of a petition signed by five hundred or more adult residents of a hospital district, or upon request set forth in the petition for a bond issue, as heretofore provided in this article, the board of county commissioners of the county in which such hospital district is located shall cause to be levied a tax for the purpose of financing the cost of operation, equipment and maintenance of any hospital facility authorized by this article, including any public or non-profit hospital facility: Provided, that the levy of such tax is approved by a majority of the qualified voters of the hospital district who shall vote thereon in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the board of county commissioners of such county; and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," and "Against Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," with squares in front of each proposition, in one of which squares the voter may make a cross mark [X]; but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section. Such election may be held at any time fixed by the board of county commissioners of such county, and the question of levying a tax for the operation and maintenance of hospital facilities, as provided by this section, may be submitted at the same time the question of issuing bonds is submitted, as provided in this article, or the question of levying a tax for operation and maintenance purposes may be submitted in a separate election according to the discretion and judgment of the board of county commissioners of the county in which the hospital district is located. Such election for the approval of a levy of taxes for costs of operation, equipment and maintenance of any hospital facility, as authorized by this article, shall be held and conducted in the same manner as elections are held and conducted to determine the question of the issuance of bonds as provided in this article. (1949, c. 766, s. 5.)

§ 131-126.39. Article supplemental to other grants of authority.—The powers conferred by this article shall be regarded as supplemental and in addition to powers conferred by other laws and shall not supplant or repeal any existing powers for the issuance of bonds and/or notes, or any provisions of law for the payment of bonds and/or notes issued under such powers, or for the custody of moneys provided for such payment. (1949, c. 766, s. 5.)

§ 131-126.40. Approval of local government commission.—This article shall constitute full authority for the things herein authorized and no proceedings, publications, notices, consents or approvals shall be required for the doing of the things herein authorized, except such as are herein prescribed and required, and except that the provisions of the Local Government Act then in

force as to the approval of the issuance of bonds and/or notes and endorsements of such approval upon such bonds and/or notes and as to the sale of bonds and/or notes and the disposition of the proceeds, shall be applicable to the bonds and/or notes, authorized by this article. The proceeds shall be paid out only upon order of the board of county commissioners. (1949, c. 766, s. 5.)

Art. 13D. Further Authority of Subdivisions of Government to Finance Hospital Facilities.

§ 131-126.41. Authority to pledge, encumber or appropriate certain funds to secure operating deficits of publicly owned or nonprofit hospitals.—The board of county commissioners of any county or the governing authority of any city or town is hereby authorized, in its discretion, to pledge, encumber or appropriate funds from any surplus funds, unappropriated funds, or funds derived from profits of alcoholic beverage control stores for the purpose of guaranteeing the operating deficit of any publicly owned or nonprofit hospital. The special approval of the general assembly is hereby given to the above enumerated appropriations and authorizations for such special purposes. (1949, c. 767, s. 1.)

§ 131-126.42. Issuance of bonds and notes for construction, operation and securing operating deficits.—The special approval of the general assembly is hereby given to the issuance by counties, cities and towns of bonds and notes for the special purpose of building, erecting and constructing any publicly owned or nonprofit hospital and for the purpose of financing the cost of operation, equipment and maintenance of any such hospital or for the purpose of securing or guaranteeing any operating deficit of any such hospital, and the special approval of the general assembly is hereby given to all counties, cities and towns to levy property taxes for the payment of said bonds and notes and interest thereon. (1949, c. 767, s. 2.)

§ 131-126.43. Tax levy for construction, operation and securing operating deficits.—The special approval of the general assembly is hereby given to the governing authority of any county, city or town for the levying of a tax on property in addition to other taxes for general purposes, not to exceed ten cents (10c) on the one hundred dollars (\$100.00) value of property annually for the purpose of financing the cost of operation, equipment and maintenance of any publicly owned or nonprofit hospital or to guarantee or secure the operating deficit of any such hospital. (1949, c. 767, s. 3.)

§ 131-126.44. Article construed as supplementary to existing hospital facility laws.—The provisions of this article shall not be construed as repealing the provisions of any other statute or act authorizing the issuance of bonds and the levying of taxes for the construction, maintenance and operation of hospitals, health centers or other hospital facility as the words "hospital facility" are defined in G. S. § 131-126.18 and likewise providing for a vote of the qualified voters in an election for the approval of such bond issue or tax levy. This article shall be construed to be additional and supplementary to all statutes and provisions of law providing for such hospital facilities, their construction and operation by bond issues and tax

levies approved by the vote of the qualified voters in an election and shall not be construed to repeal the provisions of such statutes and laws nor in any manner affect existing statutes provided for such purposes. (1949, c. 767, s. 4.)

Art. 14. Hospital for Spastic Children.

§ 131-127. Creation of hospital; powers.—An institution, to be known and designated as, "the North Carolina hospital for treatment of spastic children," is hereby created and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as herein set forth. (1945, c. 504, s. 1.)

§ 131-128. Governor to appoint board of directors; terms of office; filling vacancies.—The governor shall appoint a board of directors consisting of nine (9) members for said hospital, three of whom shall be appointed for two years, three for four years, and three for six years, who shall hold their office until their successors have been appointed. At the end of the term of office of each of said directors, their successors shall each be named for a term of six years. The governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. (1945, c. 504, s. 2.)

§ 131-129. Board authorized to acquire lands and erect buildings.—The board of directors, with the approval of the governor and the council of state, is authorized to secure by gift or purchase suitable real estate within the state at such place as the board may deem best for the purpose, and to erect or improve buildings thereon, for carrying out the purposes of the institution; but no real estate shall be purchased or any commitments made for the erection or permanent improvements of any buildings involving the use of state funds unless and until an appropriation for permanent improvements of the institution is expressly authorized by the general assembly. (1945, c. 504, s. 3.)

§ 131-130. Operation pending establishment of permanent quarters.—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the governor and council of state, is authorized and empowered to enter into an agreement with any other state institution or agency for the temporary use of any state owned property which such other state institution or agency may be able and willing to divert for the time being from its original purpose; and any other state institution or agency, which may be in possession of real estate suitable for the purpose of the North Carolina hospital for treatment of spastic children upon such terms as may be mutually agreed upon. (1945, c. 504, s. 4.)

§ 131-131. Board to control and manage hospital.—The board of directors shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the patients therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to

them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the patients of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. (1945, c. 504, s. 5.)

§ 131-132. Appointment and discharge of superintendent; qualifications and compensation.—The board of directors shall appoint a superintendent of the institution, who shall be a person of professional training and experience in the care and treatment of spastic ailments, and may fix the compensation of the superintendent, subject to the approval of the budget bureau, and may discharge the superintendent at any time for cause. (1945, c. 504, s. 6.)

§ 131-133. Aims of hospital.—The purpose and aim of the North Carolina hospital for treatment of spastic children is to treat, care for, train, and educate, as their condition will permit, all spastic children of training age in the state who are capable of being rehabilitated; to disseminate knowledge concerning the extent, nature, and prevention of spastic ailments, and to that end, subject to such rules and regulations as the board of directors may adopt, there shall be received into said hospital, spastic children under the age of twenty-one years when, in the judgment of the board of directors, it is deemed advisable. Application for the admission of a child must be made by the father if the mother and father are living together, and if not, by the one having custody, or by a duly appointed guardian or by the superintendent of any county home or by person having management of any orphanage, association, society, children's home, or other institution for the care of children to which the custody of such child has been committed, in which event the consent of the parents shall not be required. (1945, c. 504, s. 7.)

§ 131-134. Rules and regulations; payment for treatment.—The board of directors is hereby authorized and empowered to promulgate rules, regulations, and conditions of admission of patients to the hospital, but in so doing shall not exclude

any patient otherwise qualified for admission because of inability to pay for examination and treatment, and all indigent patients otherwise qualified for admission shall be received without regard to their indigent condition when there is space and accommodation available for such patients. The board of directors shall require all patients who are able, including those having persons upon whom they are legally dependent who are able, to pay the reasonable cost of treatment and care and upon their refusal to do so, the said board of directors is authorized and empowered to institute action in the name of the hospital in the county in which it is located for the collection thereof: Provided, that if the amount is less than two hundred dollars (\$200.00) the said action shall be instituted in the county where the defendant resides. (1945, c. 504, s. 8.)

§ 131-135. Discharge of patients.—Any patient entered in the hospital may be discharged therefrom or returned to his or her parents or guardian when, in the judgment of the directors, it will not be beneficial to such patient or to the best interest of the hospital to be longer retained therein. (1945, c. 504, s. 9.)

§ 131-136. Board to make further investigations.—The board of directors shall further investigate and study the need and requirements for establishing and equipping a hospital for the care and treatment of mentally normal cerebral palsy (spastic) patients and determine the annual per capita cost for the treatment of such patients, and cause to be prepared necessary plans and specifications for providing and equipping a hospital with a capacity of fifty (50) beds. Said board of directors shall present to the next session of the general assembly such plans and specifications together with its recommendations as to the establishment of such a hospital, including a site for its location. To meet the expense of preparing said plans and specifications and other incidental expenses of the board, there is hereby appropriated out of the contingency and emergency fund of the state such an amount as the governor and council of state may consider necessary. (1945, c. 504, s. 10.)

Chapter 132. Public Records.

§ 132-7. Keeping records in safe places; copying or repairing; certified copies.—In so far as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with non-combustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commis-

sion, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7; 1951, c. 294.)

Editor's Note.—The 1951 amendment inserted the fourth sentence,

Chapter 133. Public Works.

§ 133-3. Specifications to carry competitive items; substitution of materials.—All architects, engineers, designers, or draftsmen, when designing, or writing specifications for materials to be used in any city, county or state work, shall specify in their plans at least three items of equal design or their equivalent design, which would be acceptable upon such works. Where it is impossible to specify three items due to the fact that

there are not that many items in competition, then as many items as are available shall be specified. Substitution of materials or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval before any such substitutions may be made. (1933, c. 66, s. 3; 1951, c. 1104, s. 5.)

Editor's Note.—The 1951 amendment added the last sentence.

Chapter 134. Reformatories.

Art. 9. State Board of Correction and Training. Sec.

- 134-90. State board of correction and training created.
- 134-91. Powers and duties of the state board of correction and training.
- 134-92. Organization of the board.
- 134-93. Meetings of the board.
- 134-94. Executive committees.
- 134-95. By-laws; rules and regulations.
- 134-96. Commissioner of correction.
- 134-97. Compensation for members of the board.
- 134-98. Election of superintendents.
- 134-99. Bonds for superintendents and budget officers.
- 134-100. Who may be committed.
- 134-101. Removal request by board.
- 134-102. Transfer by order of governor.
- 134-103. Institution to be in position to care for offender before commitment.
- 134-104. Delivery to institution.
- 134-105. Return of boys and girls improperly committed.
- 134-106. Work to be conducted.
- 134-107. Conditional release; superintendent may grant conditional release; revocation of release.
- 134-108. Final discharge.
- 134-109. Return of runaways.
- 134-110. Aiding escapees; misdemeanor.
- 134-111. State board of health to supervise sanitary and health conditions.
- 134-112. Care of persons under federal jurisdiction.
- 134-113. Term of contract.
- 134-114. Approval by state budget bureau.

Art. 3. The Industrial Farm Colony for Women.

§ 134-36. Name and establishment.—A state institution for women to be known as Dobb's Farms, is hereby established. (1927, c. 219, s. 1; 1945, c. 847.)

Editor's Note.—The 1945 amendment changed the name of the Industrial Farm Colony for Women to Dobb's Farms.

Art. 7. Conditional Release and Final Discharge of Inmates of Certain Training and Industrial Schools.

§ 134-85. Conditional release.

Cited in *In re Burnett*, 225 N. C. 646, 36 S. E. (2d) 75.

Art. 9. State Board of Correction and Training.

§ 134-90. State board of correction and training created.—There is hereby created a state board of correction and training to be composed of nine

members, all of whom shall be appointed by the governor of North Carolina. The commissioner of public welfare shall be an ex-officio member without voting power.

The original membership of the board shall consist of three classes, the first class to serve for a period of two years from the date of appointment, the second class to serve for a period of four years from the date of appointment, and the third class to serve for a period of six years from the date of appointment. At the expiration of the original respective terms of office, all subsequent appointments shall be for a term of six years, except such as are made to fill unexpired terms. Five members of the board shall constitute a quorum.

Members of the board shall serve for terms as prescribed in this section, and until their successors are appointed and qualified. The governor shall have the power to remove any member of the board whenever, in his opinion, such removal is in the best public interest, and the governor shall not be required to assign any reason for any such removal. (1947, c. 226.)

Editor's Note.—Session Laws 1947, c. 226, s. 1, rewrote this article which was codified from Session Laws 1943, c. 776, as amended by Session Laws 1945, c. 48, and formerly contained sections 134-90 to 134-100. See 25 N. C. Law Rev. 404.

Section 2 of the act rewriting this article provides: "This article is not applicable to reformatories or homes for fallen women authorized by article 4, chapter 134 of General Statutes. Nothing contained in this article shall be construed to affect any of the provisions of G. S. 134-49 through 134-66, the same being article 4 of chapter 134 of the General Statutes."

§ 134-91. Powers and duties of the state board of correction and training.—The following institutions, schools and agencies of this state; namely, the Stonewall Jackson Manual Training and Industrial School, the State Home and Industrial School for Girls, Dobbs Farms, the Eastern Carolina Industrial Training School for Boys, the Morrison Training School, and the State Training School for Negro Girls, together with all such other correctional state institutions, schools or agencies of a similar nature, established and maintained for the correction, discipline or training of delinquent minors, now existing or hereafter created, shall be under the management and administrative control of the state board of correction and training.

Wherever in General Statutes §§ 134-1 to 134-48, inclusive, or in General Statutes §§ 134-67 to 134-89, inclusive, or in any other laws of this state, the words "board of directors," "board of trustees" "board of managers," "directors," "trus-

tees," "managers," or "board" are used with reference to the governing body or bodies of the institutions, schools or agencies enumerated in § 134-90, the same shall mean the state board of correction and training provided for in General Statutes § 134-90, and it shall be construed that the state board of correction and training shall succeed to, exercise and perform all the powers conferred and duties imposed heretofore upon the separate boards of directors, trustees or managers of the several institutions, schools or agencies herein mentioned, and said powers and duties shall be exercised and performed as to each of the institutions by the state board of correction and training herein provided for. The said board shall be responsible for the management of the said institutions, schools or agencies and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, schools or agencies subject to the provisions of the Executive Budget Act, and said board shall make report to the governor annually, and oftener if called for by him, of the condition of each of the schools, institutions or agencies under its management and control, and shall make biennial reports to the governor, to be transmitted by him to the general assembly, of all moneys received and disbursed by each of said schools, institutions or agencies.

The state board of correction and training shall have full management and control of the institutions, schools and agencies named in this article, and shall have power to administer these institutions, schools and agencies in the manner deemed best for the interest of delinquent boys and girls of all races. Similar provisions shall be made for white and negro children in separate schools. Indian children shall be provided for in a manner comparable to that afforded children of the white and negro races. Individual students may be transferred from one institution, school or agency to another, but this authority to transfer individual students does not authorize the consolidation or abandonment of any institution, school or agency. The board of correction and training, subject to the approval of the governor and the advisory budget commission, is authorized to transfer the entire population at Dobbs Farm to the State Home and Industrial School for Girls and to utilize the present facilities at Dobbs Farm as a training school for negro girls.

The state board of correction and training is hereby vested with administrative powers over the schools, institutions and agencies set forth in this article, together with all lands, buildings, improvements, and other properties appertaining thereto, and the board is authorized and empowered to do all things necessary in connection therewith for the care, supervision and training of boys and girls of all races who may be received at any of such schools, institutions or agencies. (1947, c. 226.)

§ 134-92. Organization of the board.—The state board of correction and training is hereby authorized and given full power to meet and organize, and from their number select a chairman and vice chairman. The commissioner of correction hereinafter provided for in this article shall be executive secretary to the board. All officers of the board shall serve for a two-year period, which

period shall be the same as the state's fiscal biennium. (1947, c. 226.)

§ 134-93. Meetings of the board.—The state board of correction and training shall convene at least four times a year and at places designated by the board. Insofar as practicable, the place of meetings shall rotate among the several schools and institutions. (1947, c. 226.)

§ 134-94. Executive committees.—The state board of correction and training shall select from its number an executive committee of three members. The powers and duties of the executive committee shall be prescribed by the board and all actions of this committee shall be reported to the full board at the next succeeding meeting.

In addition to the executive committee the board may set up such other committees as may be deemed necessary for the carrying out of the activities of the board. (1947, c. 226.)

§ 134-95. By-laws; rules and regulations.—The state board of correction and training shall make all necessary by-laws, rules and regulations for its own use and for the governing and administering of the schools, institutions and agencies under its control. (1947, c. 226.)

§ 134-96. Commissioner of correction.—The state board of correction and training is hereby authorized and empowered to employ a commissioner of correction who shall serve all schools, institutions and agencies covered by this article. The board shall prescribe the duties and salary of the commissioner of correction, subject to the approval of the director of the budget. The board may employ secretarial help and such other assistants as in its judgment are necessary to give effect to this article, subject, however, to the approval of the director of the budget.

The commissioner of correction shall be a person of demonstrated executive ability and shall have such special education, training, experience and natural ability in welfare, educational and correctional work as are calculated to qualify him for the discharge of his duties, such training shall include special study in the social sciences and adequate institutional and practical experiences; and he must be a person of good character. He shall devote his full time to the duties of his employment and shall hold no other office, except that he shall serve as secretary to the state board of correction and training.

The salary of the commissioner of correction and his assistants and the expenses incident to maintaining his office, his travel expenses, and the expenses of the board members shall be paid out of special appropriations set up for the state board of correction and training. The state board of public buildings and grounds shall provide suitable office space in the city of Raleigh for the commissioner and his staff. (1947, c. 226.)

§ 134-97. Compensation for members of the board.—The members of the state board of correction and training shall be paid the sum of seven dollars (\$7.00) per day and actual expenses while engaged in the discharge of their official duties. (1947, c. 226.)

§ 134-98. Election of superintendents.—The state board of correction and training shall elect a superintendent for each of the schools, institu-

tions and agencies, covered by this chapter. Each superintendent shall be equipped by professional social work training and experience to understand the needs and problems of adolescent boys and girls, to administer an institutional program and to direct professional staff members and other employees. The superintendents of the several institutions, schools and agencies shall be responsible, with the assistance of the commissioner of correction, for the employment of all personnel. The superintendents of the several schools and institutions shall likewise have the power to dismiss any employee for incompetence or failure to carry out the work assigned to him.

The superintendents shall make monthly reports to the commissioner of correction on the conduct and activities of the schools, institutions or agencies, and on the boys and girls under their care, and such reports on the financial and business management of the schools, institutions or agencies as may be required by the board of correction and training. (1947, c. 226.)

§ 134-99. Bonds for superintendents and budget officers.—All superintendents and budget officers shall before entering upon their duties make a good and sufficient bond payable to the state of North Carolina in such form and amount as may be specified by the governor and approved by the state treasurer. (1947, c. 226.)

§ 134-100. Who may be committed. — The schools, institutions and agencies enumerated, and others that now exist or may be hereafter established, shall accept and train all delinquent children of all races and creeds under the age of eighteen as may be sent by the judges of the juvenile courts or by judges of other courts having jurisdiction, provided such persons are not mentally or physically incapable of being substantially benefited by the program of the institution, school or agency. (1947, c. 226.)

§ 134-101. Removal request by board.—If any boy or girl under the care of a state school, institution or agency shall offer violence to a member of the staff or another boy or girl or do or attempt to do injury to the buildings, equipment, or property of the school, or shall by gross or habitual misconduct exert a dangerous or pernicious influence over other boys and girls, the board of correction and training may request the court committing said boy or girl or any court of proper jurisdiction to relieve the school of the custody of the boy or girl. (1947, c. 226.)

§ 134-102. Transfer by order of governor.—The governor of the state may by order transfer any person under the age of eighteen years from any jail or prison in this state to one of the institutions, schools or agencies of correction. (1947, c. 226.)

§ 134-103. Institution to be in position to care for offender before commitment.—Before committing any person to the school, institution or agency, the court shall ascertain whether the school, institution or agency is in a position to care for such person and no person shall be sent to the school, institution or agency until the committing agency has received notice from the superintendent that such person can be received. It shall be at all times within the discretion of the

state board of correction and training as to whether the board will receive any qualified person into the school, institution or agency. No commitment shall be made for any definite term but any person so committed may be released or discharged at any time after commitment, as hereinafter provided in this article. (1947, c. 226.)

§ 134-104. Delivery to institution.—It shall be the duty of the county or city authorities from which the person is sent to the school, institution or agency by any court to see that such person is safely and duly delivered to the school, institution or agency to which committed and to pay all expenses incident to his or her conveyance and delivery to the said school, institution or agency. If the offender be a girl, she must be accompanied by a woman approved by the county superintendent of public welfare. (1947, c. 226.)

§ 134-105. Return of boys and girls improperly committed.—Whenever it shall appear to the satisfaction of the superintendent of a state school, institution or agency and the state board of correction and training that any boy or girl committed to such school, institution or agency is not of a proper age to be so committed, or is not properly committed, or is mentally or physically incapable of being materially benefited by the services of such school, institution or agency, the superintendent, with the approval of the state board of correction and training, may return such boy or girl to the committing court to be dealt with in all respects as though he or she had not been so committed. (1947, c. 226.)

§ 134-106. Work to be conducted.—There shall be established and conducted on such lands as may be owned in connection with the schools, institutions or agencies such trades, crafts, arts, and sciences suitable to the students and such teachings shall be done with the idea of preparing the students for making a living for themselves after release. Schools shall be maintained of public school standards and operated by teachers holding standard certificates as accepted in state's system of public schools. A recreation program shall be maintained for the health and happiness of all students. The precepts of religion, ethics, morals, citizenship and industry shall be taught to all students. (1947, c. 226.)

§ 134-107. Conditional release; superintendent may grant conditional release; revocation of release.—The board of correction and training shall have power to grant conditional release to any person in any school, institution or agency under its jurisdiction and may delegate this power to the superintendents of the various schools, institutions and agencies, under rules and regulations adopted by the board of correction and training; such conditional release may be terminated at any time by written revocation by the superintendent, under rules and regulations adopted by the board of correction and training, which written revocation shall be sufficient authority for any officer of the school, institution or agency, or any peace officer to apprehend any person named in such written revocation in any county of the state and to return such person to the institution. (1947, c. 226.)

§ 134-108. Final discharge. — Final discharge may be granted by the superintendent under rules

adopted by the state board of correction and training at any time after admission to the school; provided, however, that final discharge must be granted any person upon reaching his twenty-first birthday. (1947, c. 226.)

§ 134-109. **Return of runaways.**—If a boy or girl runs away from a state school, institution or agency, the superintendent may cause him or her to be apprehended and returned to such school, institution or agency. Any employee of the school, institution or agency, or any person designated by the superintendent, or any official of the welfare department, or any peace officer may apprehend and return to the school, institution or agency, without a warrant, a runaway boy or girl in any county of the state, and shall forthwith carry such runaway to the school, institution or agency. (1947, c. 226.)

§ 134-110. **Aiding escapees; misdemeanor.**—It shall be unlawful for any person to aid, harbor, conceal, or assist in any way any boy or girl who is attempting to escape or who has escaped from any school, institution or agency of correction and any person rendering such assistance shall be guilty of a misdemeanor. (1947, c. 226.)

§ 134-111. **State board of health to supervise sanitary and health conditions.**—The state board of health shall have general supervision over the sanitary and health conditions of the several schools, institutions and agencies and shall make periodic examinations of the same and report to the state board of correction and training the con-

ditions found with respect to the sanitary and hygienic care of the students. (1947, c. 226.)

§ 134-112. **Care of persons under federal jurisdiction.**—The state board of correction and training is hereby empowered to make and enter into contractual relations with the proper official of the United States for admission to the state schools, institutions and agencies of such federal juvenile delinquents committed to the custody of such attorney general as provided in the Federal Juvenile Delinquency Act as would profit from the program and services of the schools, institutions or agencies. (1947, c. 226.)

§ 134-113. **Term of contract.**—Any contract made under the authority and provision of this article shall be for a period of not more than two years and shall be renewable from time to time for a period of not to exceed two years. (1947, c. 226.)

§ 134-114. **Approval by state budget bureau.**—Any contract entered into under the provisions of this article with the office of the United States attorney general, the bureau of prisons of the United States department of justice, or necessary federal agency by any of the contracting institutions for the care of any persons coming within the provisions of this article shall not be less than the current estimated cost per capita at the time of execution of the contract, and all such financial provisions of any contract, before the execution of said contract, shall have the approval of the state budget bureau. (1947, c. 226.)

Chapter 135. Retirement System for Teachers and State Employees; Social Security.

Art. 1. Retirement System for Teachers and State Employees.

Sec.

135-3.2. Membership of co-operative agricultural extension service employees.

135-15. [Repealed.]

135-16. Employees transferred to North Carolina state employment service by act of congress.

135-17. Facility of payment.

135-18. Re-employment of retired teachers and employees.

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Art. 1. Retirement System for Teachers and State Employees.

§ 135-1. Definitions.

(6) "Member" shall mean any teacher or state employee included in the membership of the system as provided in §§ 135-3 and 135-4: Provided, that no member shall be entitled to participate under the provisions of this chapter as to that part of the compensation in excess of five thousand dollars (\$5,000.00) received by such members during any year and this shall apply to all creditable service.

(10) "Prior service" shall mean service rendered prior to the date of establishment of the retirement system for which credit is allowable under § 135-4; provided, persons now employed by the state highway and public works commission shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to one thousand nine hundred and thirty-one.

(1945, c. 924; 1947, c. 458, s. 6.)

Editor's Note.—

The 1945 amendment rewrote subsection (6). The 1947 amendment omitted the words "and subsequent to one thousand nine hundred and twenty-one" formerly appearing at the end of subsection (10). As the rest of the section was not affected by the amendments it is not set out.

Session Laws 1951, c. 562, ss. 1, 2 added to the former title of this chapter and inserted the heading of article 1. Section 3 of the act added all of article 2.

§ 135-3. Membership.—The membership of this retirement system shall be composed as follows:

(1) All persons who shall become teachers or state employees after the date as of which the retirement system is established. On and after July 1st, 1947, membership in the retirement system shall begin ninety days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this chapter.

(2) All persons who are teachers or state employees on February 17, 1941, or who may become teachers or state employees on or before July first, one thousand nine hundred and forty-one, except those who shall notify the board of trustees, in writing, on or before January first, one thousand nine hundred and forty-two, that they do not choose to become members of this retirement system, shall become members of the retirement system.

(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.

(4) Notwithstanding any provisions contained in this section, any employee of the state of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the president of the United States effective on or after January first, one thousand nine hundred and forty-two, and who on the effective date of such executive order was a member of the retirement system and had not withdrawn all of his or her accumulated contributions, shall be deemed to be a member of the retirement system during such period of federal service or employment by virtue of such executive order of the president of the United States. Any such employee who within a period of twelve months after the cessation of such federal service or employment, is again employed by the state or any employer as said term is defined in this chapter, or within said period of twelve months engages in service or membership service, shall be permitted to resume active participation in the retirement system and to resume his or her contributions as provided by this chapter. If such member so elects, he or she may pay to the board of trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the state or an employer as defined in this chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable compensation received by such member on the effective date of such executive order.

(5) Any teacher or state employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or state employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946.

(6) No person who becomes a "teacher or em-

ployee," as the terms are defined in this chapter, shall be or become a member of the retirement system who is elected, appointed or employed after he has attained the age of sixty years.

(7) (a) Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (4), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said system shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be filed within a period of 12 months from and after the 60th birthday of such applicant. Such deferred retirement allowance shall be computed in accordance with the provisions of § 135-5, 1949 Cumulative Supplement, subsection (2), paragraphs (a), (b) and (c). In the event that such member attains his 61st birthday and has not filed such application, his membership shall cease and he shall be entitled to the sum of the contributions standing to the credit of his individual account in the annuity savings fund, together with such interest thereon as the board shall allow, but not less than one-half of the accumulated regular interest thereon.

(b) In lieu of the benefits provided in paragraph (a) of this subsection (7), any member who separates from service on or after July 1, 1951 and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in § 135-5, subsection (4), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said system, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

(c) In lieu of the benefits provided in paragraph (a) of this subsection (7), any member who separated from service before July 1, 1951 and prior to the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (4), and who left his total accumulated contributions in said system, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, subsequent to July 1, 1951 and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; pro-

vided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

(d) Should a teacher or employee who retired on an early retirement allowance be restored to service prior to the attainment of the age of 60 years, his allowance shall cease, he shall again become a member of the retirement system, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of Chapter 135, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in § 135-15; provided that, should such restoration occur on or after the attainment of the age of 55 years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant. (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561.)

Editor's Note.—The 1945 amendment added subsection (4). The first 1947 amendment added subsection (5); the second amendment added subsection (6) and the second sentence of subsection (1); the third amendment added subsection (7); and the fourth amendment substituted "twelve months" for "six months" in the second sentence of subsection (4).

The 1949 amendment added at the end of subsection (5) the words "unless he elected to become a member prior to July 1, 1946."

The 1951 amendment rewrote subsection (7).

§ 135-3.1. Membership of highway patrolmen.

—Every person who is employed in the future as a state highway patrolman shall automatically become a member of the teachers' and state employees' retirement system unless such person shall, within fifteen days after his employment, furnish the executive secretary of the board of trustees, teachers' and state employees' retirement system, sufficient evidence that such person has become a member of the law enforcement officers' benefit and retirement fund, in which event such person shall not be entitled to membership in the teachers' and state employees' retirement system. (1943, c. 120, s. 6; 1947, c. 692.)

Editor's Note.—Session Laws 1947, c. 692, s. 1, allowed state highway patrolmen until August 1, 1947, in which to withdraw their membership in the teachers' and state employees' retirement system and become members of the law enforcement officers' benefit and retirement fund. Session Laws 1951, c. 567, changed the date mentioned to August 1, 1951.

§ 135-3.2. Membership of co-operative agricultural extension service employees.—Under such rules and regulations as the board of trustees may establish and promulgate, co-operative agricultural extension service employees may, in the discretion of the governing authority of a county, become a member of the teachers' and state employees' retirement system to the extent of that part of their compensation derived from a county. (1949, c. 1056, s. 7.)

§ 135-4. Creditable service.—(1) Under such

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rules and regulations as the board of trustees shall adopt, each member who was a teacher or state employee at any time during the five years immediately preceding the establishment of the system and who became a member prior to July 1, 1946 shall file a detailed statement of all North Carolina service as a teacher or state employee rendered by him prior to the date of establishment for which he claims credit.

(6) Teachers and other state employees who entered the armed services of the United States on or after September sixteenth, one thousand nine hundred and forty, and prior to February seventeenth, one thousand nine hundred and forty-one and who returned to the service of the state within a period of two years after they have been honorably discharged from the armed services of the United States, shall be entitled to full credit for all prior service. Teachers and other state employees who entered the armed services of the United States on or after February 17th, 1941 and who returned to the service of the state prior to July 1st, 1950 after they have been honorably discharged from such armed services shall be entitled to full credit for all prior service, and, in addition, they shall receive membership service credit for the period of service in such armed services occurring after the date of establishment. Under such rules as the board of trustees shall adopt, the employer to which each such teacher or other state employee returned shall make contributions with respect to such member in the amounts that he would have paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the board of trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by paragraph (e) of subsection (1) of § 135-8, the board of trustees shall refund to or reimburse such member for such payments.

(7) Teachers and other state employees who served in the armed forces of the United States and who, after being honorably discharged, returned to the service of the state within a period of two years from date of discharge shall be credited with prior service for such period of service in the armed forces of the United States; and the salaries or compensations paid to such employees immediately before entering the armed forces shall be deemed to be the actual compensation rates of such teachers and state employees during said period of service. (1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4.)

Editor's Note.—

The 1945 amendment inserted in lines two and three of

subsection (6) the words "on or." The 1947 amendment added subsection (7). The 1949 amendment rewrote subsection (1) and added the last four sentences of subsection (6). As the rest of the section was not affected by the amendments it is not set out.

§ 135-5. Benefits.

(2) Service Retirement Allowances.—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at age of sixty years computed on the basis of contributions made prior to the attainment of age sixty; and, if the member contributed during the period from July 1st, 1941, to June 30th, 1947, an additional supplementary pension which shall be equal to one-fourth of the annuity allowable at age of sixty years, computed on the basis of contributions made during such period but prior to the attainment of age sixty, plus one-fourth of the annuity allowable at his retirement age computed on the basis of contributions made during such period; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the system been in operation and had he contributed thereunder at the rate of five per centum of his compensation, plus the pension, which would have been provided at age sixty on account of such contributions.

(6) Return of Accumulated Contributions.—Should a member cease to be a teacher or state employee except by death or retirement under the provisions of this chapter, he shall be paid such part as he shall demand of the sum of the contributions standing to the credit of his individual account in the annuity savings fund, together with such interest thereon as the board shall allow, but not less than one-half of accumulated regular interest thereon. Upon receipt of proof satisfactory to the board of trustees of the death of a member in service there shall be paid to his legal representatives or to such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, the amount of his accumulated contributions at the time of his death.

(8) Computation of Benefits Payable Prior or Subsequent to July 1, 1947.—Prior to July 1st, 1947, all benefits payable as of the effective date of this act shall be computed on the basis of the provisions of chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1st, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the board of trustees may adopt, the provisions of this act as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserve between the funds of the retirement system as may be required by the provisions of this subsection.

(9) Restoration to service of certain former

members.—If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the retirement system, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5.)

Editor's Note.—The 1945 amendment made changes in subsection (6). The 1947 amendment rewrote paragraphs (b) and (c) of subsection (2). It also rewrote subsection (6) and added subsection (8). The 1949 amendment added the second sentence of subsection (6). It also added subsection (9). Only the subsections affected by the amendments are set out.

§ 135-6. Administration.

(2) Membership of Board; Terms.—The board shall consist of eight members, as follows:

(a) The state treasurer, ex-officio;

(b) The superintendent of public instruction, ex-officio;

(c) Six members to be appointed by the governor and confirmed by the senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the state; one of the appointive members shall be an employee of the state highway and public works commission, who shall be appointed by the governor for a term of four years commencing April 1st, 1947 and quadrennially thereafter; one to be a general state employee, and three who are not members of the teaching profession or state employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years. At the expiration of these terms of office the appointment shall be for a term of four years.

(1947, c. 259.)

The 1947 amendment increased the membership of the board from seven to eight and the appointive members from five to six. It also inserted in the provision requiring one of the appointive members to be an employee of the state highway and public works commission. As only subsection (2) was affected by the amendment the rest of the section is not set out.

§ 135-8. Method of financing.

(1) Annuity Savings Fund.—

(a) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum of his earnable compensation; and the employer also shall deduct four per centum of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the state from salaries other than the appropriations from the state of North Carolina. On and after such date the rate so deducted shall be five per centum. In determining the amount earnable by a member in

a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if a teacher or state employee was not a member on the first day of the payroll period.

(f) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund.

(3) Pension Accumulation Fund.—

(c) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate. Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined.

(1947, c. 458, ss. 1, 2, 8.)

The 1947 amendment rewrote paragraph (a) of subsection (1) and added paragraph (f) thereto. It also added the third sentence to paragraph (c) of subsection (3). As the rest of the section was not affected by the amendment only the paragraphs mentioned are set out.

§ 135-15: Repealed by Session Laws 1949, c. 1056, s. 9.

§ 135-16. Employees transferred to North Carolina state employment service by act of congress.

—Notwithstanding any provision contained in this chapter, any employee of the United States Employment service who was transferred to and became employed by the state of North Carolina, or any of its agencies, on November 16th, 1946, by virtue of Public Law 549, 79th Congress, Chapter 672, 2nd Session, and who was employed by the war manpower commission or the United States employment service between January 1st, 1942, and November 15th, 1946, shall be deemed to have been engaged in membership service as defined by this chapter for any payroll period or periods between such dates: Provided, that any such employee or member on or before January 1st, 1948, pays to the board of trustees for the benefit of the proper fund or account an amount equal to the accumulated contributions, with interest thereon, that such employee or member would have made during such period if he had been a member of the retirement system with earnable compensation based on the salary received for such period and as limited by this chapter. Provided, further that funds are made available by the United States employment service, or other federal agency, to the employment security commission for the payment of and the employment security commission pays to the board of trustees for the benefit of the proper fund a sum equal to the employer's contribu-

tions that would have been paid for such period for members or employees who pay the accumulated contributions provided in this section.

The board of trustees is authorized to adopt and issue all necessary rules and regulations for the purpose of administering and enforcing the provisions of this section. (1947, c. 464, s. 1; c. 598, s. 1.)

Editor's Note.—By virtue of Session Laws 1947, c. 598, s. 1, "employment security commission" was substituted for "unemployment compensation commission."

§ 135-17. Facility of payment.—In the event of the death of a member or beneficiary not survived by a person designated to receive any return of accumulated contributions or balance thereof, or in the event that the board of trustees shall find that a beneficiary is unable to care for his affairs because of illness or accident, any benefit payments due may, unless claim shall have been made therefor by a duly appointed guardian, committee or other legal representative, be paid to the spouse, a child, a parent or other blood relative, or to any person deemed by the board of trustees to have incurred expense for such beneficiary or deceased member, and any such payments so made shall be a complete discharge of the liabilities of this retirement system therefor. (1949, c. 1056, s. 6.)

§ 135-18. Re-employment of retired teachers and employees.—The board of trustees of the teachers' and state employees' retirement system may establish and promulgate rules and regulations governing the re-employment of retired teachers and employees. (1949, c. 1056, s. 8.)

§ 135-18.1. Transfer of credits from the North Carolina Local Governmental Employees' Retirement System.—(1) Any person who is a member of the teachers' and State employees' retirement system of North Carolina on July 1, 1951, and who was previously a member of the North Carolina Governmental Employees' Retirement System, hereafter in this section referred to as the local system, shall be entitled to transfer to this retirement system his credits for membership and prior service in the local system as of the date of termination of membership in the local system, notwithstanding that his membership in the local system may have been terminated prior to July 1, 1951: Provided, such member shall deposit in this retirement system prior to January 1, 1952, the full amount of any accumulated contributions standing to his credit in, or previously withdrawn from, the local system and shall apply to the board of trustees of this retirement system for a transfer of credit from the local system. Any person who becomes a member of this retirement system after July 1, 1951, shall be entitled to transfer to this retirement system his credits for membership and prior service in the local system as of the date of termination of membership in the local system: Provided, such person, prior to or at the date of his withdrawal from the local system shall notify the board of trustees of the local system of his intention to enter this retirement system, and shall request a refund of the total amount of the accumulated contributions standing to his credit in the annuity savings fund of the local system, and shall deposit such contributions so refunded from the local system in this retirement system

within six months from the date of such refund, with request to the board of trustees of this system for transfer of his credits from the local system.

(2) The accumulated contributions withdrawn from the local system and deposited in this retirement system shall be credited to such member's account in the annuity savings fund of this retirement system and shall be deemed, for the purpose of computing any benefits subsequently payable from the annuity savings fund, to be regular contributions made on the date of such deposit.

(3) Upon the deposit in this retirement system of the accumulated contributions previously withdrawn from the local system the board of trustees of this retirement system shall request the board of trustees of the local system to certify to the period of membership service credit and the regular accumulated contributions attributable thereto and to the period of prior service credit, if any, and the contributions with interest allowable as a basis for prior service benefits in the local system, as of the date of termination of membership in the local system. Credit shall be allowed in this system for the service so certified in determining the member's credited service and, upon his retirement he shall be entitled, in addition to the regular benefits allowable on account of his participation in this retirement system, to the pension which shall be the actuarial equivalent at age 60 or at retirement, if prior thereto, of the amount of the credit with interest thereon representing contributions attributable to his service credits in the local system.

(4) Anything to the contrary herein notwithstanding, if a member transferring his credits to this retirement system as herein provided retires on a retirement allowance in this retirement system within five years after the date of such deposit, the benefits payable with respect to the service credits so transferred from the local system to this retirement system shall not be greater than those which would have been payable with respect to such service had he remained in the local system.

(5) The board of trustees of the retirement system shall effect such rules as it may deem necessary to prevent any duplication of service, interest or other credits which might otherwise occur. (1951, c. 797.)

Art. 2. Coverage of Governmental Employees under Title II of the Social Security Act.

§ 135-19. Declaration of policy.—In order to extend to employees of the State and its political subdivisions and of the instrumentalities of either, and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitation of this article, that such steps be taken as to provide such protection to employees of the State and local governments on as broad a basis as is permitted under applicable federal law. (1951, c. 562, s. 3.)

§ 135-20. Definitions.—For the purposes of this article:

(a) The term "wages" means all remuneration

for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were paid for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

(b) The term "employment" means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this article would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the State and the federal security administrator entered into under this article.

(c) The term "employee" includes an officer of the State, or one of its political subdivisions or instrumentalities.

(d) The term "State agency" means the secretary of the board of trustees of the teachers' and State employees' retirement system.

(e) The term "federal security administrator" includes any individual to whom the federal security administrator has delegated any of his functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions.

(f) The term "political subdivision" includes an instrumentality of a state, of one or more of its political subdivisions, or of a state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision.

(g) The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended.

(h) The term "Federal Insurance Contributions Act" means subchapter A of Chapter 9 of the Federal Internal Revenue Code as such Code has been and may from time to time be amended. (1951, c. 562, s. 3.)

§ 135-21. Federal-State agreement; interstate instrumentalities.—(a) The State agency, with the approval of the Governor, is hereby authorized to enter on behalf of the State into an agreement with the federal security administrator, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of the State or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in § 135-20. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the State agency and federal security administrator shall

agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that—

(1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act.

(2) The State will pay to the secretary of the treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in § 135-20), equal to the sum of the taxes which would be imposed by §§ 1400 and 1410 of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into.

(4) All services which constitute employment as defined in § 135-20 and are performed in the employ of the State by employees of the State, shall be covered by the agreement.

(5) All services which (A) constitute employment as defined in § 135-20, (B) are performed in the employ of a political subdivision of the State, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State agency under § 135-23, shall be covered by the agreement.

(b) Any instrumentality jointly created by this State and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the federal security administrator whereby the benefits of the federal old age and survivors insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under § 135-22(a) if they were covered by an agreement made pursuant to subsection (a) of this section, and (3) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (a) and other provisions of this article. (1951, c. 562, s. 3.)

§ 135-22. Contributions by State employees.—

(a) Every employee of the State whose services are covered by an agreement entered into under § 135-21 shall be required to pay for the period of such coverage, into the contribution fund established by § 135-24, contributions, with respect to wages (as defined in § 135-20), equal to the amount of tax which would be imposed by § 1400 of the Federal Insurance Contributions Act

if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the State, or his entry upon such service, after the enactment of this article.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State agency shall prescribe. (1951, c. 562, s. 3.)

§ 135-23. Plans for coverage of employees of political subdivisions.—

(a) Each political subdivision of the State is hereby authorized to submit for approval by the State agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivisions. Each such plan and any amendment thereof shall be approved by the State agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the State agency, except that no such plan shall be approved unless—

(1) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under § 135-21.

(2) It provides that all services which constitute employment as defined in § 135-20 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan.

(3) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose.

(4) It provides for such methods of administration of the plan by the political subdivision as are found by the State agency to be necessary for the proper and efficient administration of the plan.

(5) It provides that the political subdivision will make such reports, in such form and containing such information, as the State agency may from time to time require, and comply with such provisions as the State agency or the federal security administrator may from time to time find necessary to assure the correctness and verification of such reports.

(6) It authorizes the State agency to terminate the plan in its entirety, in the discretion of the State agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the State agency and may be consistent with the provisions of the Social Security Act.

(b) The State agency shall not finally refuse

to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c) (1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in § 135-20), at such time or times as the State agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the State agency under § 135-21.

(2) Each political subdivision required to make payments under paragraph (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this article, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in § 135-20), not exceeding the amount of tax which would be imposed by § 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum (6%) per annum, be recovered by action in the superior court of Wake county against the political subdivision liable therefor or may, at the request of the State agency, be deducted from any other moneys payable to such subdivision by any department or agency of the State. (1951, c. 562, s. 3.)

§ 135-24. Contribution fund.—(a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund: (1) All contributions, interest, and penalties collected under §§ 135-22 and 135-23; (2) all moneys appropriated thereto under this article; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this article, the State agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this article.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the State and shall be used and administered exclusively for the purpose of this article. Withdrawals from such fund shall be

made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under § 135-21; (B) payment of refunds provided for in § 135-22(c); and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the secretary of the treasury such amounts and at such time or times as may be directed by the State agency in accordance with any agreement entered into under § 135-21 and the Social Security Act.

(d) The treasurer of the State shall be ex-officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this article and the directions of the State agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the State agency may prescribe pursuant thereto.

(e) (1) There are hereby authorized to be appropriated biennially to the contribution fund, in addition to the contributions collected and paid into the contribution fund under §§ 135-22 and 135-23, to be available for the purposes of § 135-24(b) and (c) until expended, such additional sums as are found to be necessary in order to make the payments to the secretary of the treasury which the State is obligated to make pursuant to an agreement entered into under § 135-21.

(2) The State agency shall submit to each regular session of the State legislature, at least ninety (90) days in advance of the beginning of such session, an estimate of the amounts authorized to be appropriated to the contribution fund by paragraph (1) of this subsection for the next appropriation period.

(f) The State agency shall have the authority to promulgate rules and regulations under which the State agency may make a reasonable charge or assessment against any political subdivision whose employees shall be included in any coverage agreement under any plan of coverage of employees as provided by the provisions of this article. Such charge or assessment shall be determined by the State agency and shall be apportioned among the various political subdivisions of government in a ratable or fair manner, and the funds derived from such charge or assessment shall be used exclusively by the State agency to defray the cost and expense of administering the provisions of this article. In case of refusal to pay such charge or assessment on the part of any political subdivision as defined in this article, or in case such charge or assessment remains unpaid for a period of thirty (30) days, the State agency may maintain a suit in the superior court of Wake county for the recovery of such charge or assessment. The superior court of Wake county is hereby vested with jurisdiction over all such suits or actions. Only such amount shall be assessed against such political subdivision as is necessary to pay its share of the expense of providing supplies, necessary employees and clerks, records and other proper expenses necessary for the administration of this article by the State agency. The funds accumulated and de-

rived from such assessments and charges shall be deposited by the State agency in some safe and reliable depository chosen by the State agency, and the State agency shall issue such checks or vouchers that may be necessary to defray the above-mentioned expenses of administration with the right of the representative of any political subdivision to inspect the books and records and inquire into the amounts necessary for such administration. (1951, c. 562, s. 3.)

§ 135-25. **Rules and regulations.**—The State agency shall make and publish such rules and regulations, not inconsistent with the provisions of this article, as it finds necessary or appropriate to the efficient administration of the func-

tions with which it is charged under this article. (1951, c. 562, s. 3.)

§ 135-26. **Studies and reports.**—The State agency shall make studies concerning the problem of old age and survivors insurance protection for employees of the State and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this article and shall submit a report to the legislature at the beginning of each regular session, covering the administration and operation of this article during the preceding biennium, including such recommendations for amendments to this article as it considers proper. (1951, c. 562, s. 3.)

Chapter 136. Roads and Highways.

Art. 2. Powers and Duties of Commission.

Sec.

- 136-18.1. Use of Bermuda grass.
- 136-19.1. Surplus material derived from grading to be made available to adjoining landowners.
- 136-33.1. Signs for protection of cattle.
- 136-36. [Repealed.]
- 136-38 to 136-41. [Repealed.]
- 136-41.1. Maintenance, etc., of municipal streets which form part of State highway system.
- 136-41.2. Appropriation to municipalities; allocation of funds.
- 136-41.3. Use of funds; records and annual statement; contracts for maintenance, etc., of streets.

Art. 4. Neighborhood Roads, Cartways, Church Roads, etc.

- 136-71. Church roads and easements of public utility lines laid out on petition; procedure.

Art. 6A. Municipal Corporations Operating Toll Roads.

- 136-89.1. Who may file petition with municipal board of control for organization of corporation.
- 136-89.2. Presentation of petition to secretary of board of control; contents of petition; order for and notice of hearing.
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Art. 6B. Turnpikes.

- 136-89.12. Turnpike projects.
- 136-89.13. Credit of State not pledged.
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- 136-89.23. Remedies.
- 136-89.24. Exemption from taxation.
- 136-89.25. Miscellaneous.
- 136-89.26. Turnpike revenue refunding bonds.
- 136-89.27. Transfer to State.
- 136-89.28. Preliminary expenses.
- 136-89.29. Additional method.
- 136-89.30. Article liberally construed.

Art. 7. Miscellaneous Provisions.

- 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway.

Art. 1. Organization of State Highway and Public Works Commission.

§ 136-1. **State highway and public works commission created.**

The chairman shall devote his entire time and attention to the work of the commission, and shall receive as his compensation such sum as may be fixed in the discretion of the governor and advisory budget commission, payable monthly, and his actual traveling expenses when engaged in the discharge of his duties.

(1945, c. 895.)

Editor's Note.—

The 1945 amendment rewrote the fifth sentence beginning in line twenty-two. As the rest of the section was not affected by the amendment it is not set out.

For acts relating to parking meters in certain localities and exempting them from this chapter, see Session Laws 1947, c. 54 (city of Shelby); c. 66 (town of Laurinburg); c. 275 (city of Statesville); c. 735 (town of Mooresville); c. 1035 (county of Cabarrus).

Art. 2. Powers and Duties of Commission.

§ 136-18. **Powers of commission.**

(i) To employ appropriate means for properly selecting, planting and protecting trees, shrubs,

vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to co-operate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of these objectives. No such roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes and every use or attempted use of any such area for commercial purposes shall constitute a misdemeanor and each day's use shall constitute a separate offense.

(t) To prohibit the erection of any informational, regulatory, or warning signs within the right of way of any highway project built within the corporate limits of any municipality in the state where the funds for such construction are derived in whole or in part from federal appropriations expended by the state highway and public works commission, unless such signs have first been approved by the state highway and public works commission. (1921, c. 2, s. 10; 1923, c. 160, s. 1; 1923, c. 247; 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; 1933, c. 517, s. 1; 1935, c. 213, s. 1, c. 301; 1937, c. 297, s. 2; 1937, c. 407, s. 80; 1941, c. 47; 1941, c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; C. S. 3846(j).)

Editor's Note.—

The 1945 amendment added subsection (t), and the 1951 amendment rewrote subsection (l). As the rest of the section was not affected by the amendment it is not set out.

Injunction Will Not Lie against State Highway Commission.—Plaintiffs sued the state highway and public works commission to enjoin it from enforcing its ordinance restricting the placing of advertising signs along the state highways, alleging that the ordinance was in excess of the authority vested in the commission and was unconstitutional. The members of the commission were not made parties defendant. It was held that defendant's demurrer was properly sustained, since injunction will not lie against a state agency to prevent it from committing a wrong. *Schloss v. State Highway, etc., Comm., 230 N. C. 489, 53 S. E. (2d) 517.* See note to § 136-18.

Cited in *Wood v. Carolina Tel. etc., Co., 228 N. C. 605, 46 S. E. (2d) 717, 3 A. L. R. (2d) 1.*

§ 136-18.1. Use of Bermuda grass.—The use of Bermuda grass shall be restricted to sections of the highway where the abutting property is not in cultivation, except where the state highway and public works commission has written consent of the abutting landowner. In long sections of woodland or waste land sufficiently distant from cultivated areas, Bermuda grass may be used. The commission and its employees shall use every reasonable effort to eliminate Bermuda grass heretofore planted on the shoulders of the highways through cultivated farm areas. (1945, c. 992.)

§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.

Whenever the commission and the owner or owners of the lands, materials, and timber required by the commission to carry on the work as herein provided for, are unable to agree as to the price thereof, the commission is hereby vested with the power to condemn the lands, materials, and timber, and in so doing the ways, means,

methods, and procedure of chapter 40, entitled "Eminent Domain," shall be used by it as near as the same is suitable for the purposes of this section, and in all instances the general and special benefits shall be assessed as offsets against damages: Provided, that in all cases where the state highway and public works commission, upon the completion of the particular project, posts a notice at the courthouse door in each county wherein any part of the particular project is situated, and posts such notice in appropriate and suitable size at each end of the project for thirty (30) days to the effect that the project was completed as of a certain date named in the notice, any action for damages for rights of way or other causes shall be brought within six months from the date the project was completed as specified in such notice, and in all cases where the state highway and public works commission does not post notice as above set forth, any action may be brought within twelve months from the date of the completion of the project.

(1949, c. 1115.)

Editor's Note.—The 1949 amendment rewrote the proviso at the end of the second paragraph. As the rest of the section was not changed by the amendment only this paragraph is set out.

For comment on the operation of this section in connection with chapter 40, see 28 N. C. Law Rev. 403.

Commission Not Subject to Suit Except as Provided by Law.—The state highway and public works commission is an agency of the state and as such is not subject to suit save in a manner expressly provided by statute. *Schloss v. State Highway, etc., Comm., 230 N. C. 489, 53 S. E. (2d) 517.* See note to § 136-18.

Right to Compensation Does Not Rest upon Statute.—The right to compensation for property taken under the power of eminent domain does not rest upon statute but has always obtained in this jurisdiction. *Lewis v. North Carolina State Highway, etc., Comm., 228 N. C. 618, 46 S. E. (2d) 705.*

Six Months' Limitation upon Action for Damages.—The requirement of this section that actions for damages for the taking of a right of way for highway purposes where the owner and the commission cannot agree upon the amount must be commenced within six months from the completion of the project, is a statute of limitation rather than a condition precedent to the right of action. *Lewis v. North Carolina State Highway, etc., Comm., 228 N. C. 618, 46 S. E. (2d) 705.*

Commission Held Not Estopped to Plead Statute of Limitation.—The fact that representatives of the state highway and public works commission assured the owners of the servient tenement that the commission would provide them a safe approach to the new highway, does not estop the commission from pleading the six months statute of limitations as a defense to their action for damages for the taking of a right of way for highway purposes, there being no evidence that the commission requested plaintiffs to delay the pursuit of their rights or that it made any agreement, express or implied, that it would not plead the statute. *Lewis v. North Carolina State Highway, etc., Comm., 228 N. C. 618, 46 S. E. (2d) 705.*

A cause of action for breach of contract cannot be joined in a special proceeding for condemnation, under this section and § 40-12. *Dalton v. State Highway, etc., Comm., 223 N. C. 406, 407, 27 S. E. (2d) 1.*

Elements of Damage.—

In accord with original. See *Dalton v. State Highway, etc., Comm., 223 N. C. 406, 407, 27 S. E. (2d) 1.*

The measure of damages for the taking of a part of a tract of land for highway purposes is the difference between the fair market value of the entire tract immediately before the taking and the fair market value of the portion left immediately after the taking, which difference embraces compensation for the part taken and compensation for injury to the remaining portion, less general and special benefits resulting to the landowner by the utilization of the property for a highway. *Proctor v. State Highway, etc., Comm., 230 N. C. 687, 55 S. E. (2d) 479.*

Either Party May Institute Proceedings.—If the owner and the State Highway and Public Works Commission are

unable to agree as to the amount of compensation for taking of property under eminent domain, either party may institute proceedings to have the matter determined. *Proctor v. State Highway, etc., Comm.*, 230 N. C. 687, 55 S. E. (2d) 479.

Cited in *Bailey v. State Highway, etc., Comm.*, 230 N. C. 116, 52 S. E. (2d) 276.

§ 136-19.1. Surplus material derived from grading to be made available to adjoining landowners.

—It shall be the duty of the state highway and public works commission or any contractor working for said commission to make available to the adjoining landowner any gravel, dirt or material which is available from grading a road or highway through such adjoining lands which is not required or desired by the state highway and public works commission for use upon any part of the highway, and said surplus material shall not be sold or disposed of by the state highway and public works commission or any contractor working for them until the adjoining landowner has been given the right to accept and use the same when deposited on any convenient place at or near his land by the contractor or the commission. (1949, c. 1076.)

§ 136-29. Settlement of controversies between commission and awardees of contracts.

Upon receipt of said appeal the chairman of the state highway and public works commission shall promptly appoint some competent person, and the claimant shall likewise select a competent person, and these two shall elect a third such person, the three of whom shall constitute a board of review, and shall promptly set a time and place for the hearing.

(1947, c. 530.)

Editor's Note.—

The 1947 amendment rewrote the third sentence which formerly provided for the appointment of a "committee" of three members of the commission, and substituted therefor the present "board of review." As the rest of the section was not changed it is not set out.

§ 136-33.1. Signs for protection of cattle.—

Upon written request of any owner of more than five head of cattle, the state highway and public works commission shall erect appropriate and adequate signs on any road or highway under the control of the state highway and public works commission, such signs to be so worded, designed and located as to give adequate warning of the presence and crossing of cattle. Such signs shall be located at points agreed upon by the owner and the state highway and public works commission at points selected to give reasonable warning of places customarily or frequently used by the cattle of said owner to cross said road or highway, and no one owner shall be entitled to demand the placing of signs at more than one point on a single or abutting tracts of land. (1949, c. 812.)

§ 136-36: Repealed by Session Laws 1951, c. 260, s. 4.

§ 136-37. Basis of apportionment between municipalities; annual certification of allocations.—

Of such funds as may be appropriated from time to time for the maintenance, repair, improvement, construction, reconstruction or widening of highways and streets in cities and towns, one third shall be apportioned or allocated as between the several cities and towns by the state highway and public works commission upon the basis that the

population of each city or town bears to the total population of all the cities and towns at the last preceding United States census, adjusted to take care of any cities or towns incorporated after the taking of the last census, and one third upon the basis that the mileage of streets which form a part of the state highway system in all the cities and towns and one third on the basis of relative need as between the various cities and towns as determined by the state highway and public works commission. Each year before the first day of June the state highway and public works commission shall certify an accurate account of such allocations to each city or town. (1941, c. 217, s. 2; 1951, c. 386.)

Editor's Note.—This section, which was repealed by Session Laws 1951, c. 260, s. 4, was apparently reinstated by the 1951 amendment, which inserted the words "adjusted to take care of any cities or towns incorporated after the taking of the last census."

§§ 136-38 to 136-41: Repealed by Session Laws 1951, c. 260, s. 4.

§ 136-41.1. Maintenance, etc., of municipal streets which form part of State highway system.

—From and after July 1, 1951, all streets within municipalities which now or hereafter may form a part of the State highway system shall be maintained, repaired, improved, widened, constructed and reconstructed by the State Highway and Public Works Commission, to the same extent and in the same manner as is done on roads and highways of like nature outside the corporate limits and the costs of such activities shall be paid from the State Highway and Public Works Fund. Provided, that municipalities shall be required to provide one-third of the cost of acquisition of right-of-way for new streets or for relocating or widening old streets. The appropriations in the Budget Appropriation Bill of 1951-53, the same being chapter 642 of the Session Laws of 1951, for the maintenance of State highways, both within and without cities and towns, together with any other appropriations for such purposes hereafter made, shall be used by the State Highway and Public Works Commission for the purposes specified in this section as well as for maintaining other portions of the State highway system. (1951, c. 260, s. 1; c. 948, s. 1.)

Editor's Note.—The preamble to Session Laws 1951, c. 260, from which §§ 136-41.1 to 136-41.3 are codified, states: "It is the declared policy of the State: 1. That all streets in cities and towns which are now, or hereafter may be, a part of, continuation of, or a connecting link between highways, shall be declared a part of the State public roads system, and shall be wholly constructed, reconstructed and maintained by the State Highway and Public Works Commission out of the State highway funds. 2. The cost of the construction, reconstruction and maintenance of all other streets in the cities and towns of the State, shall be equalized, between the cities, towns, and the State, as may be determined by the General Assembly. The construction and maintenance of such streets shall remain under the jurisdiction of the cities and towns."

§ 136-41.2. Appropriation to municipalities; allocation of funds.—In addition to the amounts to be expended under the preceding section, there is hereby annually appropriated out of the State Highway and Public Works Fund a sum equal to the amount that was produced during the preceding fiscal year by $\frac{1}{2}$ of one-cent tax on each gallon of motor fuel taxed by §§ 105-434 and 105-435 of the General Statutes, to be allocated in cash on or before October first each year

after March 15, 1951, to the cities and towns of the State in accordance with the following formula:

One-half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities as indicated by the latest certified federal decennial census, and one-half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which do not form a part of the highway system bears to the total mileage of public streets in all eligible municipalities which do not constitute a part of the State highway system.

No municipality shall be eligible to receive funds under §§ 136-41.1 and 136-41.2 unless it has within the four-year period next preceding the annual allocation of funds conducted an election for the purpose of electing municipal officials and currently imposes an ad valorem tax or provides other funds for the general operating expenses of the municipality. It shall be the duty of the mayor of each municipality to report to the State Highway and Public Works Commission such information as it may request for its guidance in determining the eligibility of each municipality to receive funds by virtue of §§ 136-41.1 and 136-41.2 and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the State Highway and Public Works Commission, the State Highway and Public Works Commission may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 each year after March 15, 1951.

No allocation to cities and towns shall be made under the provisions of this section from the one cent per gallon additional tax on gasoline imposed by Chapter 1250 of the Session Laws of 1949, unless and until said additional one cent per gallon gasoline tax produces funds which are not needed for or committed by said Chapter 1250 of the Session Laws of 1949, to the payment of the principal of or the interest on the secondary road bonds issued pursuant to the provisions of said Chapter 1250 of the Session Laws of 1949. The State Highway and Public Works Commission is hereby authorized to withhold each year an amount not to exceed 1% of the total amount appropriated in § 136-41.1 for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than sixteen (16) feet. In order to obtain the necessary information to distribute the funds herein allocated, the State Highway and Public Works Commission may require that each municipality eligible to receive funds under §§ 136-41.1 and

136-41.2 submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The State Highway and Public Works Commission may in its discretion require the certification of mileage on a biennial basis. (1951, c. 260, s. 2; c. 948, ss. 2, 3.)

§ 136-41.3. Use of funds; records and annual statement; contracts for maintenance, etc., of streets.—The funds allocated to cities and towns under the provisions of § 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes.

Each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of §§ 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 shall file a statement under oath with the chairman of the State Highway and Public Works Commission showing in detail the expenditure of funds received by virtue of §§ 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

In the discretion of the local governing body of each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 it may contract with the State Highway and Public Works Commission to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The State Highway and Public Works Commission within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the State Highway and Public Works Commission in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system. (1951, c. 260, s. 3; c. 948, s. 4.)

§ 136-43. Expenditure of highway funds for erection of historical markers.—

That expenditures by the State Highway and Public Works Commission in co-operation with the Department of Conservation and Development and the State Historical Commission for the

purposes of carrying out the program outlined in the preamble hereof is hereby declared to be a valid expenditure of State Highway maintenance funds: Provided, that not more than ten thousand dollars in any one fiscal year shall be expended for this purpose, but this limitation shall not be construed to prevent the expenditure of any Federal Highway Funds that may be available for this purpose. (1935, c. 197; 1951, c. 766.)

Editor's Note.—The 1951 amendment substituted "ten thousand dollars (\$10,000) in any one fiscal year" for "five thousand dollars in any one year" formerly appearing in lines eight and nine of the last paragraph. As the rest of the section was not affected by the amendment it is not set out.

Art. 3. General Provisions.

Part II. County Public Roads Incorporated into State Highway System.

§ 136-53. Map of county road systems posted; objections.

Cited in *Speight v. Anderson*, 226 N. C. 492, 39 S. E. (2d) 371.

Art. 4. Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.—All those portions of the public road system of the state which have not been taken over and placed under maintenance or which have been abandoned by the state highway and public works commission, but which remain open and in general use as a necessary means of ingress to and egress from the dwelling house of one or more families, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the department of public welfare, and all other roads or streets or portions of roads or streets whatsoever outside of the boundaries of any incorporated city or town in the state which serve a public use and as a means of ingress or egress for one or more families, regardless of whether the same have ever been a portion of any state or county road system, are hereby declared to be neighborhood public roads and they shall be subject to all of the provisions of §§ 136-68, 136-69 and 136-70 with respect to the alteration, extension, or discontinuance thereof, and any interested party is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient: Provided, that this definition of neighborhood public roads shall not be construed to embrace any street, road or driveway that serves an essentially private use, and all those portions and segments of old roads, formerly a part of the public road system, which have not been taken over and placed under maintenance and which have been abandoned by the state highway and public works commission and which do not serve as a necessary means of ingress to and egress from an occupied dwelling house are hereby specifically excluded from the definition of neighborhood public roads, and the owner of the land, burdened with such portions and segments of such old road, is hereby invested with the ease-

ment of right of way for such old roads heretofore existing.

Upon request of the board of county commissioners of any county, the state highway and public works commission is permitted, but is not required, to place such neighborhood public roads as above defined in a passable condition without incorporating the same into the state or county system, and without becoming obligated in any manner for the permanent maintenance thereof.

This section shall not authorize the reopening on abandoned roads of any railroad grade crossing that has been closed by order of the state highway and public works commission in connection with the building of an overhead bridge or underpass to take the place of such grade crossing. (1929, c. 257, s. 1; 1933, c. 302; 1941, c. 183; 1949, c. 1215.)

Editor's Note.—The 1949 amendment rewrote this section. **Purpose of Section.**—The purpose of this section, defining neighborhood public roads, was to bring the designated roads within the procedure prescribed in the original act, chap. 448, P. L. 1931 (now a part of § 136-53). *Speight v. Anderson*, 226 N. C. 492, 39 S. E. (2d) 371, 373.

Section Applies Only to Established Easements and Roads.—This section refers to traveled ways which were at the time of the adoption of the 1941 amendment established easements or roads or streets in a legal sense, and it cannot be construed to include ways of ingress and egress existing by consent of the landowner as a courtesy to a neighbor, nor to those adversely used for a time insufficient to create an easement. *Speight v. Anderson*, 226 N. C. 492, 39 S. E. (2d) 371, 373.

Road Maintained for Convenience of Landowner's Tenants.—Where all the evidence tended to show that road was laid out and maintained primarily as a convenience for those who resided on defendants' tracts, no continuous use for a public purpose was disclosed within meaning of this section. *Speight v. Anderson*, 226 N. C. 492, 39 S. E. (2d) 371, 374.

Adjudication of Road as a Neighborhood Public Road Not Authorized.—Where it was controverted whether the road in question was used permissively as a way to a private cemetery or whether it was used by the public under claim of right to a community cemetery, petitioners were not entitled to have it adjudicated a neighborhood public road solely upon a finding by the jury that it was constructed or reconstructed with employment relief funds under the supervision of the Department of Public Welfare. *Raynor v. Ottoway*, 231 N. C. 99, 56 S. E. (2d) 28.

Testimony that relief funds were used under authorization of the Department of Public Welfare on a cemetery project and that the supervisor in charge of the work, upon suggestion of an interested worker, had the workers improve the road to the cemetery, was held insufficient to establish that the reconstruction of the road was authorized or directed by the Department of Public Welfare within the meaning of this section. *Raynor v. Ottoway*, 231 N. C. 99, 56 S. E. (2d) 28.

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

Cross Reference.—See note to § 136-69.

Municipality Has Exclusive Control of Streets and Ways.—The law relating to cartways was not intended to withdraw from cities and towns any part of their exclusive control over their streets and other public ways, and confers no jurisdiction on the clerk of the Superior Court to establish an alley within an incorporated town. *Parsons v. Wright*, 223 N. C. 520, 27 S. E. (2d) 534.

This Section and § 136-69 to Be Strictly Construed.—This and the following section, relating to the establishment of cartways for ingress and egress to a highway over intervening lands, are in derogation of common law and must be strictly construed. *Brown v. Glass*, 229 N. C. 657, 50 S. E. (2d) 912.

An action to obtain a judicial declaration of plaintiff's right to an easement appurtenant and by necessity over the lands of defendants is authorized by Chap. 1, Art. 26, and the superior court has jurisdiction, it not being a special proceeding to establish a cartway, which must be instituted before the clerk. *Carver v. Leatherwood*, 230 N. C. 96, 52 S. E. (2d) 1.

Applied in *Garris v. Byrd*, 229 N. C. 343, 49 S. E. (2d) 625.

§ 136-69. Cartways, tramways, etc., laid out; procedure.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (Rev., s. 2686; Code, s. 2056; 1917, c. 282, s. 1; 1917, c. 187, s. 1; 1909, c. 364, s. 1; 1903, c. 102; 1887, c. 46; R. C., c. 101, s. 37; 1798, c. 508, s. 1; 1822, c. 1139, s. 1; 1879, c. 258; 1921, c. 135; Ex. Sess. 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; C. S. 3836.)

Cross Reference.—See notes to § 136-68.

Editor's Note.—

The 1951 amendment added the above paragraph at the end of the section. As the rest of the section was not affected by the amendment, it is not set out.

Petitioner's Land Must Be Used for One of Purposes Enumerated.—This section enumerates the purposes for which the petitioner's land must be used in order to confer upon the owner the right of a "way of necessity" over another's land, and the listing of them excludes other uses not named, the presence of one of those named becoming a condition precedent to the exercises of the right. It will be observed that all of them respect substantial traffic or transportation of products taken from the land. *Brown v. Glass*, 229 N. C. 657, 50 S. E. (2d) 912.

Petitioners are not entitled to the establishment of a cartway over the intervening lands of another for the purpose of egress to the highway for a home they propose to construct on their adjoining land, since such use does not come within those enumerated in this section. *Id.*

And Petitioner Must Have No Other Adequate Means of Transportation.—Petitioner is entitled to the establishment of a cartway across the lands of another only if petitioner's land is not adjacent to a public road and has no other adequate and proper means of ingress and egress to the highway, and he is not entitled to the relief if he has such means available to him at the time. *Garris v. Byrd*, 229 N. C. 343, 49 S. E. (2d) 625.

Effect of Permissive Way.—If a permissive way is in all respects reasonable and adequate as a proper means of ingress and egress, the petition for a cartway should be denied. Conversely, if the permissive nature of the way renders it insufficient to meet the requirement of "other adequate means of transportation" within the meaning of the statute, the relief should be granted. Where the court below found that the permissive way available to petitioner was "in all respects reasonable and adequate" and then concluded that the petitioner was entitled to a cartway, the supreme court deemed it devisable to vacate the judgment entered and remand the cause for a rehearing. *Garris v. Byrd*, 229 N. C. 343, 49 S. E. (2d) 625.

The laying off of a cartway and the adjudication of damages are matters for the jury of view, subject to review by the court. *Garris v. Byrd*, 229 N. C. 343, 49 S. E. (2d) 625.

Appeal Lies from Order Appointing Jury.—In a proceeding to establish a cartway or way of necessity from lands of petitioners to a state highway, under this and the preceding section, an order of the clerk adjudging that petitioners are entitled to the relief and appointing a jury of view to "lay off" the cartway is a final determina-

tion of the right to the easement, leaving only the mechanics of execution to the jury of view, and therefore an appeal to the superior court by respondents whose lands are affected is not premature, and judgment of the superior court dismissing the appeal and remanding the cause to the clerk, is erroneous. *Triplett v. Lail*, 227 N. C. 274, 41 S. E. (2d) 755.

§ 136-71. Church roads and easements of public utility lines laid out on petition; procedure.—Necessary roads or easements and right of ways for electric light lines, power lines, water lines, sewage lines, and telephone lines leading to any church or other place of public worship may be established in the same manner as set forth in the preceding sections of this article upon petition of the duly constituted officials of such church. (Rev., ss. 2687, 2689; Code, ss. 2062, 2064; 1872-3, c. 189, ss. 1-3, 5; 1931, c. 448; 1949, c. 382; C. S. 3838.)

Editor's Note.—The 1949 amendment inserted the provision as to easements and rights of way for electric light and other lines.

Art. 6. Ferries and Toll Bridges.

§ 136-89. Safeguarding transportation of life; guard chains or gates.

Editor's Note.—To the historical reference appearing in original should be added, "C. S. 3825(b), 3825(c)."

Art. 6A. Municipal Corporations Operating Toll Roads.

§ 136-89.1. Who may file petition with municipal board of control for organization of corporation.—Any number of persons not less than ten (10) are hereby authorized and empowered to file a petition with the municipal board of control created by G. S. § 160-195, for the organization and creation of a municipal corporation for the purpose of acquiring rights of way, owning and operating a toll road or highway in the state. (1949, c. 1024, s. 1.)

§ 136-89.2. Presentation of petition to secretary of board of control; contents of petition; order for and notice of hearing.—The petition shall be presented to the secretary of the municipal board of control and shall set forth the name by which the municipal corporation is to be known and shall describe in a general way the location of the proposed highway or toll road which is to be constructed or acquired, and by giving the names of the owners of the lands over which the said toll road or highway is to be constructed. The said petition shall describe in general terms the nature of the highway to be constructed and the width of the right of way which is desired to be acquired, which shall not exceed a width of one hundred (100) feet.

The secretary of said board shall thereupon make an order prescribing the time and place for the hearing of said petition before the municipal board of control. Notice of hearing shall be published once a week for four weeks in a newspaper published in or having a circulation in the county or counties where such toll road or highway is to be constructed, giving notice of the proposal to organize a municipal corporation for such purpose. Such notice is to be signed by the secretary of said board. (1949, c. 1024, s. 2.)

§ 136-89.3. Procedure on hearing; order creating municipal corporation; recordation of papers relating to organization; fees; amendments to

charter.—Any person in any manner interested in the laying out and construction of the said toll road or highway may appear at the hearing of such petition, and the matter shall be tried as an issue of fact by the municipal board of control, and no formal answer to the petition need be filed. The board may adjourn the hearing from time to time in its discretion. The municipal board of control shall determine whether or not the laying out, construction and operation of the toll road is in the public interest and whether all the requirements of this article have been substantially complied with and, if the municipal board of control shall so find, it shall enter an order creating a municipal corporation and fixing the name of the same, giving it the name proposed in the petition unless, for good cause, it finds that some other name should be provided.

All papers in reference to the organization of such municipal corporation shall be filed and recorded in the office of the secretary of state, and certified copies thereof shall be filed and recorded in the office of the clerk of the superior court of the county in which such municipal corporation shall operate. The fees shall be the same as now provided for organization of a private non-stock corporation and shall be paid out of the funds of such municipality.

Upon the approval of the municipal board of control and the recording of the papers, as above provided, the organization shall become a municipal corporation with such powers and functions as are prescribed in this article.

After the organization of such municipal corporation, the commissioners of said municipal corporation may amend, change or add to their charter by filing a petition with the municipal board of control, setting out therein the purpose of the amendment, the changes in, additions to, or the altered location of the proposed highway or toll road which is to be constructed or acquired, and the additional rights, powers or privileges necessary for the construction, acquisition and operation of the project. The petition shall be presented to the secretary of the municipal board of control who shall thereupon make an order prescribing a time and place for the hearing of said petition before the municipal board of control. Notice of hearing shall be published in the same manner as provided for the original petition for the formation of said municipal corporation, except that advertisement of such hearing may be waived by the municipal board of control, if, in their opinion, the desired changes, alterations or additions to the charter of the municipal corporation do not affect the public interest. Amendment in this manner may be had to accomplish a change in the location of the proposed highway or toll road, an extension or addition thereto, the construction of a feeder road or bridge having a direct relationship to the original objective of the formation of the municipal corporation, or any other accomplishment deemed expedient or necessary by the commissioners of the municipal corporation. (1949, c. 1024, s. 3; 1951, c. 993, s. 1.)

Editor's Note.—The 1951 amendment added the last paragraph.

§ 136-89.4. Election of board of commissioners; term of office; vacancy appointments.—Within

ninety (90) days after the organization of such municipal corporation, the petitioners for the same shall meet at the courthouse of the county in which the said toll road or highway or some part thereof is located and elect a board of not less than three (3) nor more than seven (7) commissioners which shall act as the governing board of said municipal corporation. Notice of the time and place of such meeting may be given by any three (3) of the petitioners, and such board of commissioners, when elected, shall serve for a term of six (6) years from the date of their election or until their successors are duly elected and qualified. The successors to such board of commissioners shall be elected by the commissioners before their term of office expires, and any vacancy in the membership thereof shall be filled by the remaining members of the said commission. (1949, c. 1024, s. 4.)

§ 136-89.5. President and secretary of board; seal.—The board of commissioners of said municipal corporation shall elect a president and secretary thereof and adopt a common seal, said officers to serve for a term of six years or until their successors are duly elected and qualified. Any vacancies occurring in such offices shall be filled by the appointment of the board of commissioners for the unexpired term of the one creating such vacancy. (1949, c. 1024, s. 5.)

§ 136-89.6. Powers and duties of corporation generally.—The said municipal corporation, when organized, shall have the following powers:

1. (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt a corporate seal and alter the same at pleasure;

(c) To maintain an office at such place or places within the State as it may designate;

(d) To sue and be sued in its own name;

(e) To construct, maintain, repair and operate the toll road, toll bridge or turnpike at such location within the North Carolina counties of Currituck, Dare, Tyrrell, Hyde, and Carteret as shall be adopted by the municipal corporation;

(f) To issue turnpike revenue bonds of the municipal corporation, for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds;

(g) To fix and revise, from time to time, and charge and collect tolls for transit over the turnpike constructed by it, without obtaining the consent or approval of any department, division, commission, board, bureau, or agency of the State, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article;

(h) To establish rules and regulations for the use of the turnpike;

(i) To purchase, solely from funds provided under this article, such lands, buildings, structures, rights-of-way, franchises, easements and interest in lands necessary for the construction, operation or protection of the toll road or turnpike, upon such terms and at such prices as may be considered by the municipal corporation to be reasonable and can be agreed upon between it and the owner thereof;

(j) To designate the locations of and establish, limit and control such points of ingress to and egress from the turnpike as may be necessary or desirable in the judgment of the municipal corporation to insure the proper operation and maintenance of the turnpike; and to prohibit entrance to the turnpike from any point or points not so designated;

(k) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(l) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment; to fix their compensation; and to promote and discharge such employees and agents;

(m) To accept loans and grants of money or materials or property, at any time, from the United States of America or the State of North Carolina or any agency or instrumentality thereof, or any person, firm or corporation, upon such terms and conditions as the lender or grantor may impose;

(n) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article;

(o) To enter upon any lands, waters and premises in the State through its authorized agents and employees for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall such an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending. The municipal corporation shall make reimbursement for any actual damages resulting to such lands, waters and premises as the result of such activities;

(p) To include as a part of the cost of any project undertaken under the authority of this article, the cost of the acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the corporation for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, or on land through and across which a right-of-way has been granted, conditioned on the removing of buildings thereon and the relocation thereof, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the commission, for a period not exceeding one year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expense as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation.

2. Trust Agreement.—In the discretion of the municipal corporation any bonds issued under the provisions of this article may be secured by

a trust agreement by and between the municipal corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company, within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign tolls or other revenues to which the municipal corporation's right then exists or may thereafter come into existence, and the moneys derived therefrom, and the proceeds of such bonds, but shall not convey or mortgage the toll road or turnpike or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the municipal corporation in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike, the rates of tolls and revenues to be charged, the payment, security or redemption of bonds, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation of the toll road or turnpike. It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the municipal corporation. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual rights of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such provisions as the municipal corporation may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement may be treated as a part of the cost of the operation of the turnpike.

Any pledge of tolls or other revenues or other moneys made by the municipal corporation shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the municipal corporation shall immediately be subject to the lien of such pledge without any physical delivery thereof, or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind, in tort, contract or otherwise, against the municipal corporation, irrespective of whether such parties have notice thereof.

2½. Upon the completion of any project authorized under the terms of this article, the municipal corporation shall file with the chairman of the North Carolina State Highway and Public Works Commission a report prepared by a certified public accountant, showing all items which were included in the original cost of the project, the schedule of salaries, wages, and operating expenses budgeted for the project, and shall at periodic intervals thereafter, at least once in every year, file an operating statement for the project, as prepared by the auditors or accountants of the municipal corporation.

3. Revenues.—The municipal corporation is hereby authorized to fix, revise, charge and collect tolls for the use of the turnpike and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of all or any part thereof, including the right-of-way adjoining the paved portion for placing thereon telephone, telegraph, electric light or power lines, provided that a sufficient number of gas stations shall be authorized to be established in each service area along any such turnpike to permit reasonable competition by private business in the public interest. Such tolls shall be so fixed and adjusted as to carry out and perform the terms and provisions of any contract with or for the benefit of bondholders. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The use and disposition of tolls and revenues shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same.

4. The authority of the municipal corporation to construct a toll road or turnpike shall not be limited to the construction of a roadway or highway but shall include the authority to construct a toll road across any body of water, navigable or nonnavigable, within the counties of Currituck, Dare, Tyrrell, Hyde and Carteret, and the State of North Carolina expressly consents to the construction of such toll road or bridge over and across waters within its jurisdiction when the charter of said municipal corporation provides for such construction.

5. The municipal corporation is hereby authorized to make and enter into a contract or agreement with any other municipal corporation, authority, person, firm or corporation, either within or without the State, containing one or more of the following described provisions:

(a) A provision whereby the municipal corporation shall agree to construct the toll road or turnpike described in its charter, or any amendment thereto, and to maintain and operate it until all revenue bonds issued by the other contracting party to finance the acquisition and construction of any toll road or turnpike joining or connecting with the toll road or turnpike proposed to be constructed by said municipal corporation shall have been paid, or until a sufficient amount for their payment shall have been set aside in trust for the benefit of the holders of said revenue bonds of the other contracting party;

(b) Provisions whereby the municipal corporation and the other contracting party shall agree to act as agent, each for the other, in the collection of tolls for vehicular traffic using both the toll road or turnpike constructed by the municipal corporation and the toll road or turnpike constructed by the other contracting party;

(c) Provisions under which tolls collected by either the municipal corporation or the other contracting party for traffic over either the toll road, turnpike or bridge constructed by the municipal corporation or the toll road, turnpike or bridge constructed by the other contracting party shall be apportioned between the municipal corporation and the other contracting party on the basis of their respective costs of construction, operation,

maintenance and debt service, or on any other equitable basis; and

(d) Such other provisions as may be reasonable and proper and not in violation of law to assure the construction, maintenance and operation of the toll road, turnpike or bridge constructed by the municipal corporation and the toll road, turnpike or bridge constructed by the other contracting party, and the payment of the revenue bonds issued to finance said construction. (1949, c. 1024, s. 6; 1951, c. 993, s. 2.)

Editor's Note.—The 1951 amendment rewrote this section. **Quoted** in Penn v. Carolina Virginia Coastal Corp., 231 N. C. 481, 57 S. E. (2d) 817.

§ 136-89.7. Power of eminent domain.—In the event the said municipal corporation is unable to agree with the owner of the land across whose land a toll road or highway is to be constructed as to the acquisition of the right of way across such land for the use and operation of the said toll road, the said municipal corporation shall have the right to acquire such easement and right of way by eminent domain upon compliance with the provisions of the Public Works Eminent Domain Law, set forth in article 3 of chapter 40, of the General Statutes, provided, that the said right of way shall not exceed one hundred (100) feet in width, or such right of way may be condemned in accordance with the provisions of article 2 of chapter 40 of the General Statutes of North Carolina. (1949, c. 1024, s. 7.)

Quoted in Penn v. Carolina Virginia Coastal Corp., 231 N. C. 481, 57 S. E. (2d) 817.

§ 136-89.8. Operation of corporation for public benefit.—Said corporation, when created, shall be operated entirely for the benefit of the public, and no person shall receive any profits whatever from the operation thereof, except that the officers and employees of said corporation shall be paid by the governing board thereof reasonable compensation for services rendered. (1949, c. 1024, s. 8.)

§ 136-89.9. Issuance of revenue bonds.—In order to defray the costs of the acquisition of right of way and the construction of the said toll road or highway and structures which are placed thereon, the said municipal corporation is hereby authorized and empowered to issue revenue bonds, in accordance with the provisions of Revenue Bonds Act of 1938, as set forth in article 34 of chapter 160 of the General Statutes, and G. S. § 160-423 shall not be applicable as to any bonds issued by such municipality, and the same may be issued at any time thereafter as may be determined by the governing board thereof. (1949, c. 1024, s. 9.)

§ 136-89.10. Bonds, notes and property exempt from taxation.—All of said bonds and notes and coupons shall be exempt from all state, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest on said bonds and notes shall not be subject to taxation as for income, nor shall said bonds or notes or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company or other corporation. All the property of the said corporation shall be exempt from all taxation. (1949, c. 1024, s. 10.)

§ 136-89.11. Acquisition of toll road or highway by state highway and public works commission.—In the event the state highway and public works commission shall at any time hereafter determine to acquire any toll road or highway which may be constructed by a municipal corporation organized under the provisions of this article, for the purpose of operating the same as a part of the state highway system, the state highway and public works commission shall have a right to acquire the same and to enter into an agreement with the municipal corporation created under the provisions of this article for the acquisition of such road or highway, and all rights of such municipal corporation therein, upon the condition that the state highway and public works commission shall pay or assume all of the outstanding obligations of such municipal corporation, including any outstanding bonds, incurred or issued in the acquisition of rights of way and construction of such improvements and, upon such contract being entered into, all of the right, title and interest of such municipal corporation created hereunder to such toll road or highway shall cease and determine and the same shall become a part of the state highway system, and such road or highway may be operated as a toll road or otherwise, as the state highway and public works commission may determine. (1949, c. 1024, s. 11.)

Art. 6B. Turnpikes.

§ 136-89.12. Turnpike projects.—In order to provide for the construction of modern express highways or superhighways embodying safety devices, including center division, ample shoulder widths, long sight distances, multiple lanes in each direction and grade separation at intersections with other highways and railroads, and thereby facilitate vehicular traffic, provide better connections between the highway system of North Carolina and the highway systems of the adjoining states, remove many of the present handicaps and hazards on the congested highways in the State, and promote the agricultural and industrial development of the State, the North Carolina Turnpike Authority (hereinafter created) is hereby authorized and empowered to construct, maintain, repair and operate turnpike projects (as hereinafter defined), and to issue revenue bonds of the Authority, payable solely from revenues, to finance such projects. (1951, c. 894, s. 1.)

§ 136-89.13. Credit of State not pledged.—Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but all such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the project or projects for which they are issued and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the pro-

visions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which money shall have been provided under the provisions of this article. (1951, c. 894, s. 2.)

§ 136-89.14. North Carolina Turnpike Authority.—There is hereby created a body politic and corporate to be known as the "North Carolina Turnpike Authority". The Authority is hereby constituted a public instrumentality, and the exercise by the Authority of the powers conferred by this article in the construction, operation and maintenance of turnpike projects shall be deemed and held to be the performance of an essential governmental function.

The North Carolina Turnpike Authority shall consist of five members, including the chairman of the State Highway and Public Works Commission who shall be a member ex officio, and four members appointed by the Governor who shall serve for terms expiring on July 1, 1952, July 1, 1953, July 1, 1954, and July 1, 1955, respectively, the term of each to be designated by the Governor, and until their respective successors shall be duly appointed and qualified. The successor of each of the four appointed members shall be appointed for a term of four years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired terms, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the Governor for misfeasance, malfeasance, or wilful neglect of duty, but only after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointed member of the Authority before entering upon his duties shall take an oath to administer the duties of his office faithfully and impartially, and a record of each oath shall be filed in the office of the Secretary of State.

The Authority shall elect one of the appointed members as chairman of the Authority and another as vice chairman, and shall also elect a secretary-treasurer who need not be a member of the Authority. The chairman, vice chairman and secretary-treasurer shall serve as such officers at the pleasure of the Authority. Three members of the Authority shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Before the issuance of any turnpike revenue bonds under the provisions of this article, each member of the Authority shall execute a surety bond in the penal sum of twenty-five thousand dollars (\$25,000.00) and the secretary-treasurer shall execute a surety bond in the penal sum of fifty thousand dollars (\$50,000.00), each such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State as surety and to be approved by the Attorney General and filed in the office of the Secretary of State.

The chairman of the Authority shall receive the sum of fifteen dollars (\$15.00) for each day or part thereof of service, but not exceeding three

thousand dollars (\$3,000.00) in any one year. The other appointed members of the Authority shall receive the sum of ten dollars (\$10.00) for each day or part thereof of service, but not exceeding two thousand dollars (\$2,000.00) in any one year. The chairman of the State Highway and Public Works Commission shall serve as a member of the Authority without extra compensation for such service. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. (1951, c. 894, s. 3.)

§ 136-89.15. Definitions.—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:—

(a) The word "Authority" shall mean the North Carolina Turnpike Authority, created by § 136-89.14, or, if said Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this article to the Authority shall be given by law.

(b) The word "project" or the words "turnpike project" shall mean any highway, express highway or superhighway, toll road or toll bridge constructed under the provisions of this article by the authority, including all other bridges, tunnels, overpasses, underpasses, interchanges, entrance places, approaches, toll houses, service stations, and administration, storage and other buildings and facilities which the Authority may deem necessary for the operation of such project, and may mean any toll bridge and approaches thereto constructed and financed as a separate project, together with all property, rights, easements, and interests which may be acquired by the Authority for the construction or the operation of such project.

(c) The word "cost" as applied to a turnpike project shall embrace the cost of construction, the cost of the acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the Authority for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expense as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation. Any obligation of expense hereafter incurred by the State Highway and Public Works Commission with the approval of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed to the

Commission out of the proceeds of turnpike revenue bonds hereinafter authorized.

(d) The words "public highways" shall include all public highways, roads and streets in the State, whether maintained by the State or by any county, city, town or other political subdivision.

(e) The word "bonds" or the words "turnpike revenue bonds" shall mean revenue bonds of the Authority authorized under the provisions of this article.

(f) The word "owner" shall include all individuals, copartnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this article. (1951, c. 894, s. 4.)

§ 136-89.16. General grant of powers.—The authority is hereby authorized and empowered:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office at such place or places within the State as it may designate;

(d) To sue and be sued in its own name, plead and be impleaded;

(e) To construct, maintain, repair and operate turnpike projects at such locations within the State as may be determined by the Authority and approved by the State Highway and Public Works Commission; provided, further, that no turnpike or toll road shall be constructed or operated in this State unless and until a certificate of approval be first obtained from the State Highway Commission certifying that the operation of such toll road or turnpike will not be harmful or injurious to the secondary or primary roads embraced in the system of State highways.

(f) To issue turnpike revenue bonds of the Authority for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this article;

(g) To fix and revise from time to time and charge and collect tolls for transit over each turnpike project constructed by it;

(h) To establish rules and regulations for the use of any such turnpike project;

(i) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;

(j) To designate the locations, and establish, limit and control such points of ingress to and egress from each turnpike project as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(k) To make and enter into contracts and operating agreements with similar organizations or agencies of other states and to make and enter into all other contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(l) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(m) To receive and accept from any federal

agency grants for or in aid of the construction of any turnpike project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and

(n) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1951, c. 894, s. 5.)

§ 136-89.17. Acquisition of property.—The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this article, such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within the State, as it may deem necessary or convenient for the construction and operation of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the State.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands or parts thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, municipality or political subdivision, deemed necessary or convenient for the construction or the efficient operation of any project or necessary in the restoration of public or private property damaged or destroyed. The amount and size of any lands, property, rights-of-way, easements and other property to be obtained by the Authority under its exercise of the power of eminent domain shall first be determined and approved by the State Highway and Public Works Commission. Any such proceedings shall be conducted, and the compensation to be paid shall be ascertained and paid, in the manner provided by the laws of the State then applicable which relate to condemnation or the exercise of the power of eminent domain as provided in Chapter 40 of the General Statutes and amendments thereof. Title to any property acquired by the Authority shall be taken in the name of the State. In any condemnation proceedings the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the Authority and to the owners of the property to be condemned and may acquire an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Authority to accept and pay for the property, but neither such undertaking or security nor any act or obligation of the Authority shall impose any liability upon the State or the Authority except as may be paid from the funds provided under the authority of this article.

If the owner, lessee or occupier of any property to be condemned shall refuse to remove his per-

sonal property therefrom or give up possession thereof, the Authority may proceed to obtain possession in any manner now or hereafter provided by law.

With respect to any railroad property or right-of-way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein which shall be located either sufficiently far above or sufficiently far below the grade of any railroad track or tracks upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting structures and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings for such easement over or under such railroad property or right-of-way, plans and specifications of the proposed project showing compliance with the above-mentioned above or below grade requirements and showing sufficient and safe plans and specifications of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within 30 days to approve the plans and specifications so submitted, the matter shall be submitted to the North Carolina Utilities Commission whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Such overhead or undergrade structure and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the North Carolina Utilities Commission as the case may be. A copy of the plans and specifications approved by the railroad or the North Carolina Utilities Commission shall be filed as an exhibit with the petition for condemnation.

Whenever it shall be found necessary to cross any electric power or telephone or telegraph lines any powers of condemnation or eminent domain may be exercised only to acquire an easement thereover without any unnecessary interference with the continued use and operation of such lines. The Authority shall pay any and all costs which may be necessary to make such crossings reasonably safe and usable. If the Authority and the owner of such power, telephone or telegraph lines are unable to agree upon the terms and conditions as to the payment of damages and costs involved in such matters, and the way and manner in which such crossings shall be made, this shall be determined by the North Carolina Utilities Commission upon petition filed by the Authority and after notice and hearing as to the other utilities concerned, in accordance with such rules and procedures as may be prescribed by the said Commission. Before using such easement as may be acquired by the Authority as herein provided it shall fully comply with such agreement as shall be made by it with any such utility or fully com-

ply with any conditions set forth in the order of condemnation. In the event any land which is used for agricultural purposes is condemned for the location thereon of any highway under the provisions of this article which would divide one part of such agricultural land from another part thereof, the Authority shall pay all the damages to such land caused from the taking of such part thereof as shall be used for such highway and in addition thereto the damages resulting from dividing such agricultural land so that one part thereof will not be accessible to the other. If the owner of such land shall be dissatisfied with the amount of damages assessed to be paid for the taking of such property, he shall have a right to demand that the value of the whole tract of agricultural land, including woodland used as a part thereof, shall be valued and the Authority shall be required to pay in lieu of damages for condemnation of such highway thereunder the total value of such property upon conveyance of the same in fee simple, free from encumbrances, to the Authority. The owner of such property shall, however, have the option at any time to accept the damages assessed for the taking of the land or the total valuation of said property as hereinbefore provided. (1951, c. 894, s. 6.)

§ 136-89.18. Incidental powers.—The Authority shall have power to construct grade separations at intersections of any turnpike project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

If the Authority shall find it necessary to change the location of any portion of any public highway, it shall cause the same to be reconstructed at such location as the Authority shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

Any public highway affected by the construction of any turnpike project may be vacated or relocated by the Authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of such project; provided where any part of an existing public road is vacated, no charge may be made for the use of such vacated public road where the same becomes a part of a turnpike project.

In addition to the foregoing powers the Authority and its authorized agents and employees may enter upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as they may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation pro-

ceedings which may be then pending. The Authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities.

The Authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over or under any turnpike project. Whenever the Authority shall determine that it is necessary that any such public utility facility which now is, or hereafter may be, located in, on, along, over or under any turnpike project should be relocated in such turnpike project, or should be removed from such turnpike project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority; provided, however, that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Authority as a part of the cost of such turnpike project. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

The State hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Authority to be necessary for the construction or operation of any turnpike project; provided no public property may be used except upon the approval of the State Highway and Public Works Commission, and with the consent of the Governor and the Council of State acting together. (1951, c. 894, s. 7.)

§ 136-89.19. Turnpike revenue bonds.—The Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more turnpike projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which

may be at any bank or trust company within or without the State. The bonds shall be signed by the chairman of the Authority or shall bear his facsimile signature, and the official seal of the Authority shall be impressed thereon and attested by the secretary-treasurer of the Authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Authority may sell such bonds in such manner and for such price as it may determine will best effect the purposes of this article.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the turnpike project or projects for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the State; and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article. (1951, c. 894, s. 8.)

§ 136-89.20. Trust agreement.—In the discretion of the Authority any bonds issued under the provisions of this article may be secured by a trust

agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any turnpike project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike project or projects in connection with such bonds shall have been authorized, the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the turnpike project or projects. (1951, c. 894, s. 9.)

§ 136-89.21. Revenues.—The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each turnpike project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, gas stations, garages, stores, hotels, and restaurants, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use; provided that a sufficient number of gasoline stations should be authorized to be established in each service area along any such turnpike project to permit reasonable competition by private business in the public interest. Such tolls shall be so fixed and adjusted in respect to the aggregate of tolls from the turnpike project or project in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such turnpike project or projects and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The tolls and all other revenues derived from the turnpike

project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other money so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1951, c. 894, s. 10.)

§ 136-89.22. Trust funds.—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolution or trust agreement may provide. (1951, c. 894, s. 11.)

§ 136-89.23. Remedies.—Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of tolls. (1951, c. 894, s. 12.)

§ 136-89.24. Exemption from taxation.—The ex-

ercise of the powers granted by this article will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of turnpike projects by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any turnpike project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, and any bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State, except inheritance and gift taxes. (1951, c. 894, s. 13.)

§ 136-89.25. Miscellaneous.—Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, tolltakers and other operating employees as the Authority may in its discretion employ.

All private property damaged or destroyed in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this article.

All counties, cities, towns and other political subdivisions and all public agencies and commissions of the State, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

On or before the thirtieth day of January in each year the Authority shall make an annual report of its activities for the preceding calendar year to the Governor. Each such report shall set forth a complete operating and financial statement covering its operation during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project.

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one year, or both. (1951, c. 894, s. 14.)

§ 136-89.26. Turnpike revenue refunding bonds.—The Authority is hereby authorized to provide

by resolution for the issuance of turnpike revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the turnpike project or projects in connection with which the bonds to be refunded shall have been issued. The Authority is further authorized to provide by resolution for the issuance of its turnpike revenue bonds for the combined purpose of (a) refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (b) paying all or any part of the cost of any additional turnpike project or projects. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1951, c. 894, s. 15.)

§ 136-89.27. Transfer to State.—When all bonds issued under the provisions of this article in connection with any turnpike project or projects and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, such project or projects, if then in good condition and repair, shall become part of the State highway system and shall thereafter be maintained by the State Highway and Public Works Commission free of tolls; provided, however, that the Authority may thereafter charge tolls for the use of any such project and pledge such tolls to the payment of bonds issued under the provisions of this article in connection with another turnpike project or projects, but any such pledge of tolls of a turnpike project to the payment of bonds issued in connection with another project or projects shall not be effectual until the principal of and the interest on the bonds issued in connection with the first mentioned project shall have been paid or provision made for their payment. (1951, c. 894, s. 16.)

§ 136-89.28. Preliminary expenses.—To provide for the preliminary expenses of the Authority in carrying out the provisions of this article the Governor and the Council of State acting together, with the approval of the State Highway Commission, is authorized and empowered to advance and make available to the Authority in either the current or the next succeeding biennium from the highway fund an amount not exceeding twenty-five thousand dollars (\$25,000.00). Such advance shall not be made unless at the time it is made the Governor and Council of State, and the State Highway and Public Works Commission shall have reasonable grounds for believing that the construction of a toll road by the Authority in this State is desirable and practical and will serve

the public interest. All such expenses incurred by the Authority prior to the issuance of turnpike revenue bonds under the provisions of this article shall be paid by the Authority from such appropriation and charged to the appropriate turnpike project or projects, and the Authority shall keep proper records and accounts showing each amount so charged. Upon the sale of turnpike revenue bonds for any turnpike project or projects, the funds so expended by the Authority in connection with such project or projects shall be reimbursed to the highway fund from the proceeds of such bonds.

The Authority is hereby authorized and directed when such appropriation is made available to it to make such surveys and studies of any proposed turnpike project as may be necessary to effect the financing authorized by this article at the earliest practicable time, and for this purpose to employ such consulting engineers, traffic engineers, legal and financial experts and such other employees and agents as it may deem necessary. To effect the purpose of this article the State Highway and Public Works Commission shall make available to the Authority all data in its possession and furnish such engineering services as may be possible which may be useful to the Authority in making such surveys and studies and the Commission may furnish such assistance in making investigations and in preparing designs for any turnpike project as may be agreed upon between the Commission and the Authority, the cost of such surveys and expenses incurred by the Commission to be paid by the Authority. (1951, c. 894, s. 17.)

§ 136-89.29. Additional method.—The foregoing sections of this article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds. (1951, c. 894, s. 18.)

§ 136-89.30. Article liberally construed.—This article, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1951, c. 894, s. 19.)

Art. 7. Miscellaneous Provisions.

§ 136-96. Road or street not used within 20 years after dedication deemed abandoned; declaration of withdrawal recorded; defunct corporations.

Editor's Note.—

To the historical reference appearing in original should be added, "C. S. 3846(ss), 3846(tt)."

Withdrawal in Conformity with Section Terminates Easement.—

Where land impliedly dedicated has not been actually opened or used for twenty years, and no person has asserted public or private easement thereon within the period fixed by this section or at any other time, and the land is not necessary for ingress, egress or regress to lots sold, effect is given by this section to the filing of a declaration of withdrawal of the land from dedication on the

part of those holding under the original owner, and the dedication of the land is conclusively presumed to have been abandoned, and no claim of easement public or private may thereafter be enforced. *Foster v. Atwater*, 226 N. C. 472, 38 S. E. (2d) 316, 318.

Use by Public Prevents Withdrawal.—

The dedication of a street may not be withdrawn, if the dedication has been accepted and the street or any part of it is actually opened and used by the public. *Russell v. Coggin*, 232 N. C. 674, 62 S. E. (2d) 70.

Section Not Applicable Where Road Is Way of Necessity.

—Where the jury found that continued use of the street was necessary to afford convenient ingress, egress and regress to the lot owned by plaintiffs the provisions of this section that a street not used within 20 years after dedication shall be deemed abandoned were not applicable. *Evans v. Horne*, 226 N. C. 581, 39 S. E. (2d) 612, 614, following *Home Real Estate Loan, etc., Co. v. Carolina Beach*, 216 N. C. 778, 7 S. E. (2d) 13; and distinguishing *Sheets v. Walsh*, 217 N. C. 32, 6 S. E. (2d) 817.

Where land was dedicated for street and highway purposes and such street or highway is necessary to afford convenient ingress and egress to any parcel of land sold and conveyed by the dedicator of such street or highway prior to 8 March, 1921, the dedication may not be withdrawn under the provisions of this section. *Russell v. Coggin*, 232 N. C. 674, 62 S. E. (2d) 70.

Owners Are Only Parties Entitled to Withdraw Streets from Dedication.—Where individual owners of lands subdivide and sell same by block and lot number with reference to a plat showing streets therein, they retain the fee in the streets subject to the easement thus dedicated to the public in general and to the private owners of adjacent lots in particular, and are the only parties entitled to withdraw the streets from dedication when the streets have not been used for twenty years subsequent to such dedication and are not necessary for ingress and egress to any of the lots sold. *Russell v. Coggin*, 232 N. C. 674, 62 S. E. (2d) 70.

The only instance in which the adjacent owners of lots in a subdivision may be deemed to own any right, title or interest in a dedicated street, except an easement therein, is where the street was dedicated by a corporation which has become nonexistent. *Russell v. Coggin*, 232 N. C. 674, 62 S. E. (2d) 70.

Burden of Proof and Admissibility of Evidence.—In an action for damages for trespass and to enjoin further trespass upon an easement claimed by plaintiffs by dedication, the burden is on plaintiffs to establish the property right asserted, and defendants are entitled to introduce the rec-

ord of withdrawal of dedication executed pursuant to this section as a release or extinguishment by estoppel of record from sources to which plaintiffs were a privy, notwithstanding the absence of allegation in their answer of such withdrawal from dedication. *Pritchard v. Fields*, 228 N. C. 441, 45 S. E. (2d) 575.

§ 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway.—1. It shall be unlawful for any person, firm, or corporation to construct or maintain outside the limits of any city or town in this state any billboard larger than six square feet at or nearer than two hundred feet to the point where any walk or drive from any school, church, or public institution located along any highway enters such highway except under the following conditions:

(a) Such billboard is attached to the side of a building or buildings which are or may be erected within two hundred feet of any such walk or drive and the attachment thereto causes no additional obstruction of view.

(b) A building or other structure is located so as to obstruct the view between such walk or drive and such billboard.

(c) Such billboard is located on the opposite side of the highway from the entrance to said walk or drive.

2. Any person, firm, or corporation convicted of violating the provisions of this section shall be guilty of a misdemeanor and punished by a fine of ten dollars (\$10.00), and each day that such violation continues shall be considered a separate offense. (1947, c. 304, ss. 1, 2.)

Art. 3. Citation to Highway Bond Acts.

VIII. The Secondary Road Bond Act of 1949.
Session Laws 1949, cc. 1250, 1255.

Chapter 137. Rural Rehabilitation.

Art. 2. North Carolina Rural Rehabilitation Corporation.

Sec.

137-40. [Repealed.]

137-42. Agreements as to retransfer and future use of assets.

137-43. Agreements for transfer of assets to secretary of agriculture for rural rehabilitation purposes.

Art. 2. North Carolina Rural Rehabilitation Corporation.

§ 137-40: Repealed by Session Laws 1951, c. 155, s. 3.

§ 137-42. Agreements as to retransfer and future use of assets.—The North Carolina rural rehabilitation corporation is hereby authorized and empowered to enter into all such contracts and agreements with the United States of America, acting by and through the secretary of agriculture or other appropriate officials of the United States government, as may be necessary or appropriate to accomplish the retransfer to the North Carolina rural rehabilitation corporation of the funds and assets of said corporation now held by the secretary of agriculture pursuant to the agreement of transfer between the North Carolina rural rehabilitation corporation and the United States of America, bearing date

of May 20, 1938. Said corporation is further authorized and empowered to enter into such covenants and agreements with the secretary of agriculture or other appropriate officials of the United States government in regard to the future use of said returned assets or in any other regard as may be required by Public Law 499, 81st Congress, approved May 3, 1950, or by the secretary of agriculture acting pursuant thereto. (1951, c. 155, s. 1.)

§ 137-43. Agreements for transfer of assets to secretary of agriculture for rural rehabilitation purposes.—The North Carolina rural rehabilitation corporation is further authorized and empowered to enter into such agreements with the secretary of agriculture or other appropriate officials of the United States government, and upon such terms and conditions and for such periods of time as may be mutually agreeable, for the transfer by the corporation to the secretary of agriculture of all or any part of its assets for use in the State of North Carolina in carrying out the purpose of titles I and II of the Bankhead-Jones Farm Tenant Act as now or hereafter amended by the Congress of the United States and for such other rural rehabilitation purposes within the State of North Carolina as said corporation may deem advisable. (1951, c. 155, s. 2.)

Chapter 138. Salaries and Fees.

Sec.

138-4. Governor to fix salaries of administrative officers.

§ 138-4. Governor to fix salaries of administrative officers.—The salaries of administrative officers

whose salaries are now fixed by statute shall be fixed by the governor, subject to the approval of the advisory budget commission, such salaries to be payable in equal monthly installments. (1947, c. 898.)

Chapter 139. Soil Conservation Districts.

Sec.

139-6. Election and duties of county supervisors; county chairman to be ex officio district supervisor.

139-14. Dividing large districts.

139-15. "County committeeman" construed to mean "county supervisor"; powers and duties.

§ 139-2. Legislative determinations, and declaration of policy.

C. The Appropriate Corrective Methods.—To conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out. Among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; farm drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments; manurial materials, and fertilizers for the correction of soil deficiencies, and/or to promote increased growth of soil-protecting crops; retardation of run-off by increasing the absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(1947, c. 131, s. 1.)

Editor's Note.—The 1947 amendment inserted the words "farm drainage" in line thirteen of subsection C. As the rest of the section was not affected by the amendment it is not set out.

§ 139-3. Definitions.

(12) "Due notice" means notice given by posting the same at the courthouse door and at three other public places in the county, including those where it may be customary to post notices concerning county or municipal affairs generally, not less than ten days before the date of the event of which notice is being given. At any hearing held pursuant to such a notice at the time and place designated in such a notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. (1937, c. 393, s. 3; 1947, c. 131, s. 2.)

Editor's Note.—The 1947 amendment rewrote subsection (12). As the rest of the section was not changed it is not set out.

§ 139-4. State soil conservation committee.—

A. There is hereby established to serve as an

agency of the state and to perform the functions conferred upon it in this chapter, the state soil conservation committee which shall be composed of the following members. The following shall serve, ex-officio, as members of the committee: the director of the state agricultural extension service, the director of the state agricultural experiment station, and the state forester. Three members shall consist each year of the president, first vice-president and the immediate past president of the state association of soil conservation district supervisors. The committee shall invite the secretary of the United States department of agriculture to appoint some resident of North Carolina to serve as a member of the committee. The committee, in cooperation with the North Carolina State College of Agriculture and Engineering in the state, shall develop a program for soil conservation and for other purposes as provided for in this chapter, and shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

C. The committee shall designate its chairman, and may, from time to time, change such designation. A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority of the committee in any matter within their duties shall be required for its determination. Every member of the state committee who does not receive a salary from an agency of the state or federal government, shall receive a per diem of five dollars (\$5.00) while engaged in the discharge of the duties of the committee, and all members of the state committee shall be entitled to their necessary expenses, including traveling expenses, necessarily incurred in the discharge of their duties as members of the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements

(1947, c. 131, s. 3.)

Editor's Note.—The 1947 amendment rewrote subsection A and the fourth sentence of subsection C. As the other subsections were not changed they are not set out.

§ 139-5. Creation of soil conservation districts.

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and

feasible, it shall appoint two temporary supervisors to act as the governing body of the district, who shall serve until supervisors are elected or appointed and qualify as provided in §§ 139-6 and 139-7. Such districts shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed temporary supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (1) that a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this chapter and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this chapter; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the temporary supervisors, together with a certified copy of the appointment evidencing their right to office; (3) the name which is proposed for the district; and (4) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said temporary supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the temporary supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the committee did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

(1947, c. 131, s. 4.)

Editor's Note.—The 1947 amendment rewrote the first two paragraphs of subsection F. As the rest of the section was not changed only these paragraphs are set out.

§ 139-6. Election and duties of county supervisors; county chairman to be ex officio district supervisor.—After issuance by the secretary of state of the certificate of organization of the soil conservation district, nominating petitions may be filed with the state soil conservation committee not less than ten nor more than sixty days preceding the first day of election week as provided in this section, to nominate candidates for a soil conservation committee in each county of the district, to be composed of three members. Any

qualified voter may sign as many nominating petitions as there are vacancies on the county committee to be filled, but no nominating petition shall be accepted by the committee unless it shall be subscribed by twenty-five or more qualified voters of such county.

An election to elect a member or members of a county committee shall be held annually during the week of December in which the first Tuesday after the first Monday falls, and the polls shall be open each weekday of that week from six-thirty o'clock a. m. to six-thirty o'clock p. m., Eastern Standard Time.

At the first election held pursuant to this chapter, as amended, the candidate receiving the largest vote shall be elected for a term of three years, the candidate receiving the next largest number of votes shall be elected for a term of two years and the candidate receiving the third largest number of votes shall be elected for a term of one year. The names of all nominees on behalf of whom such petitions have been signed within the time herein designated, shall appear, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the squares before any three names to indicate the voter's preference in said first election. All qualified voters residing within the county shall be eligible to vote in such election. The three candidates who shall receive the largest number of the votes cast in such election shall be elected members of the soil conservation committee for the county. Their successors shall be elected for a term of three years. All members of the county committee elected pursuant to this chapter shall take office on the first Monday in January following their election.

The state committee shall pay all of the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such an election and the determination of the eligibility of voters therein, and shall publish the results thereof.

A county committee shall select from its members a chairman, a vice-chairman, and a secretary. The chairman will be ex-officio a member of the soil conservation district board of supervisors; the vice-chairman will be first alternate district supervisor; and the secretary will be second alternate district supervisor.

It shall be the duty of members of a county soil conservation committee (1) to be responsible for the securing of nominating petitions for the election of the county committee, providing for elections, reporting the results thereof to the district supervisors, who, in turn, shall report the results to the state committee, all to be done under the supervision of the state committee; (2) to work in close harmony with the district supervisors of their district in the performance by the district supervisors of their duties set out in paragraphs (1), (2), and (6) of G. S. § 139-8; (3) to further develop annual county goals and plans for reaching these goals for soil conservation work in their county; and (4) to request agencies whose duties are such as to render assistance in soil and water conservation to set forth in writing or memorandum what assistance they may have available in the county and report such to the district super-

visors. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1.)

Editor's Note.—The 1947 amendment rewrote this section. The 1949 amendment rewrote the caption of this section.

§ 139-7. Appointment, qualifications and tenure of supervisors.—The governing body of any district shall consist of the chairman of the county committees of the counties within the district, together with such additional supervisor or supervisors as may be appointed by the state committee pursuant to this paragraph, except that when a district is composed of only one county, the members of the county committee shall be members of the board of supervisors of the district which such county comprises. When a district is comprised of less than four counties, the state committee shall appoint two residents of the district to serve as district supervisors along with the elected supervisors. When a district is comprised of four or more counties, the state committee may, but is not required to, appoint one resident of the district to serve as a district supervisor along with the elected supervisors. Such appointive supervisors shall qualify and assume their duties at the same time as the elected supervisors and shall serve for a term of three years. When a vacancy arises with respect to an appointive supervisor, the state committee shall fill such vacancy for the unexpired term by appointment of a resident of the district in which the vacancy occurs. Every supervisor shall hold office until his successor has been elected or appointed and qualifies. When a vacancy arises on a county committee, the vacancy shall be filled by appointment by the state committee, of a resident of the county, to serve the remainder of the unexpired term.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil conservation districts shall receive a per diem of five dollars (\$5.00) and necessary expenses for attendance upon meetings of district supervisors, provided that when a per diem and expense allowance is claimed for attendance upon any district supervisor's meetings outside the district for which such supervisor serves, the same may not be paid unless written approval is obtained from the state committee prior to any such meeting.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the state committee, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it

may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943, c. 481; 1947, c. 131, ss. 6, 7.)

Editor's Note.—The 1947 amendment rewrote the first two paragraphs and added the last paragraph.

§ 139-14. Dividing large districts.—Whenever the state committee shall receive a petition from any board of district supervisors signed by all supervisors of such district, the state committee shall have the authority to divide such district into two or more districts. The governing bodies of the resulting districts shall be composed of supervisors in the same manner and in the same number as is provided in §§ 139-6 and 139-7. Upon the creating of new districts through dividing an existing district under the provisions of this section, the state committee shall appoint all district supervisors necessary to give such district its full quota of supervisors who shall serve until regular supervisors are elected or appointed, as the case may be, at the time of the next regular election of supervisors. The state committee shall assign a name to each district resulting from the division of the district under the provisions of this section and do all other things necessary to complete the organization of such new districts and place them on an operating basis. (1947, c. 131, s. 8.)

§ 139-15. "County committeeman" construed to mean "county supervisor"; powers and duties.—Wherever the words "county committeeman" or "county committeemen" appear in this chapter, the same shall be construed to mean "county supervisor" or "county supervisors"; and each such county committeeman or county supervisor shall receive the same compensation and have and exercise the same rights, powers, duties, responsibilities and voting privileges granted to or imposed upon district supervisors in respect to soil conservation activities under the provisions of this chapter. (1949, c. 268, s. 2.)

Chapter 140. State Art and Symphony Societies.

Art. 1A. Acquisition and Preservation of Works of Art.

Sec.

140-5.1 Purpose of article.

140-5.2. Preservation of works of art.

140-5.3. Right to receive gifts.

140-5.4. Special fund.

140-5.5. Appropriation contingent on gifts.

140-5.6. Expenditure of funds.

140-5.7. Expenses of commission.

140-5.8. Location of art museum.

Art. 2. State Symphony Society.

140-6. Trustees for North Carolina Symphony Society.

Art. 1A. Acquisition and Preservation of Works of Art.

§ 140-5.1. Purpose of article.—The North Carolina state art society is authorized and empowered to inspect, appraise, obtain attributions and evaluations, to purchase, acquire, transport, exhibit, loan and store, and to receive on consignment or as loans, statuary, paintings and other works of art of any and every kind and description which are worthy of acquisition and preservation, and to do all other things incidental to and necessary to effectuate the purposes of this article. (1947, c. 1097, s. 1.)

§ 140-5.2. Preservation of works of art.—The North Carolina state art society shall be responsible for the care, custody, storage and preservation of all works of art acquired by it, or received by consignment or loan. (1947, c. 1097, s. 1.)

§ 140-5.3. Right to receive gifts.—In order to carry out the purposes of this article, the North Carolina state art society is authorized to acquire by gift or will, absolutely or in trust, from individuals, corporations, the federal government or from any other source, works of art or money or other property, which might be retained, sold or otherwise used to promote the purposes of the North Carolina state art society; provided that works of art acquired by the society under the provision of this section may not be pledged, mortgaged or sold; and provided, further, that any gifts, donations, devisees, bequests, or legacies of property, other than works of art, money and bonds may be disposed of only with the approval of the governor and council of state. The proceeds of the sale of any property acquired under the provisions of this section shall be deposited in the state treasury to the account of the state art society special fund. (1947, c. 1097, s. 1.)

§ 140-5.4. Special fund.—Gifts of money to the North Carolina state art society, when made for the purposes of this article, shall be paid into the state treasury and maintained as a fund to be designated: State art society special fund. All gifts made to the North Carolina state art society shall be exempt from every form of taxation including, but not by way of limitation, ad valorem, intangible, gift, inheritance and income taxation. (1947, c. 1097, s. 1.)

§ 140-5.5. Appropriation contingent on gifts.—There is hereby appropriated out of any unappropriated

general fund surplus that may exist at June 30, 1947, the sum of one million dollars (\$1,000,000.00) which appropriation shall not be made available for expenditure until funds are available to meet all appropriations made for the biennium 1947-49 and until the sum of one million dollars (\$1,000,000.00) shall have been secured through gifts and paid into the state treasury to the credit of the special fund "state art society special fund." The appropriations contained herein and the receipts collected under the provisions of this article shall be subject to the provisions of the Executive Budget Act. (1947, c. 1097, s. 1.)

§ 140-5.6. Expenditure of funds.—After the conditions set forth in § 140-5.5 shall have been complied with, the sum of one million dollars (\$1,000,000.00) appropriated in § 140-5.5 and the sum of one million dollars (\$1,000,000.00) in gifts paid into the state treasury for the state art society special fund, referred to in § 140-5.5, may be expended for the purposes set out in §§ 140-5.1, and 140-5.2 and for all necessary expenses incidental thereto, including actual necessary expenses and subsistence as may be incurred in travel for the purpose of inspecting prospective gifts and purchases, such expenditures to be made only by a commission of five members to be appointed by the governor from the membership of the North Carolina state art society, which commission shall be known as the "state art commission." The state treasurer shall, with the approval of the governor and council of state, invest any unexpended moneys in the state art society special fund in securities authorized to be purchased for the sinking funds of the state of North Carolina.

Two of the members of said commission shall be appointed for a term of one year, three members shall be appointed for a term of two years, and thereafter the term for all members of the commission shall be two years. Any vacancy arising on the commission shall be filled by appointment by the governor for the unexpired portion of the term.

Before any purchases of works of art shall be made by the "State Art Commission", such purchases shall be approved by the board of directors of the executive committee of the North Carolina state art society and appraised by the director or chief curator of the National Gallery of Art of Washington, D. C., as to the value, fitness, desirability and other features which should be considered in connection with such purchases. Dominant emphasis shall be placed upon the acquisition of masterpieces of the American, British, French, Spanish, Flemish and Dutch Schools. No expenses shall be incurred in travel for the purpose of inspecting works of art until approved in advance by the governor and council of state. (1947, c. 1097, s. 1; 1951, c. 1168.)

Editor's Note.—The 1951 amendment added the third paragraph.

§ 140-5.7. Expenses of commission.—The members of the commission described in § 140-5.6 shall serve without compensation, but in attending meetings of the commission the members shall be paid such actual necessary expenses as may be incurred in travel and subsistence while attending such meetings not in excess of that allowed by the biennial appropriation act. (1947, c. 1097, s. 1.)

§ 140-5.8. Location of art museum. — In the event of the erection of a state art museum under the provisions of this article, the same shall be erected in the city of Raleigh. (1947, c. 1097, s. 1½.)

Art. 2. State Symphony Society.

§ 140-6. Trustees for North Carolina Symphony Society.—The governing body of the North Carolina Symphony Society, Incorporated, shall be a board of trustees consisting of not less than sixteen members, of which the governor of the state and the superintendent of public instruction shall be ex officio members, and four other members shall be named by the governor. The remaining number of trustees shall be chosen by the members of the North Carolina Symphony Society, Incorporated, in such manner and at such times as that body shall determine. Of the four

members first named by the governor, two shall be appointed for terms of two years each and two for terms of four years each, and subsequent appointments shall be made for terms of four years each. (1943, c. 755, ss. 1, 2; 1947, c. 1049, ss. 1-3.)

Editor's Note.—The 1947 amendment substituted "trustees" for "directors." Prior to the amendment the membership of the board was limited to sixteen.

§ 140-7. Adoption of by-laws; amendments.—

The said board of trustees, when organized under the terms of this article, shall have authority to adopt by-laws for the society and said by-laws shall thereafter be subject to change only by a three-fifths vote of a quorum of said board of trustees. (1943, c. 755, s. 3; 1947, c. 1049, s. 2.)

Editor's Note.—The 1947 amendment substituted "trustees" for "directors."

Chapter 141. State Boundaries.

§ 141-6. Eastern boundary of state; jurisdiction over territory within littoral waters and lands under same.—1. The constitution of the state of North Carolina, adopted in 1868, having provided in article I, § 31, that the "limits and boundaries of the state shall be and remain as they now are," and the eastern limit and boundary of the state of North Carolina on the Atlantic seaboard having always been, since the Treaty of Peace with Great Britain in 1783 and the Declaration of Independence of July 4th, 1776, one marine league eastward from the Atlantic seashore, measured from the extreme low water mark, the eastern boundary of the state of North Carolina is hereby declared to be fixed as it has always been at one marine league eastward from the seashore of the

Atlantic Ocean bordering the state of North Carolina, measured from the extreme low water mark of the Atlantic Ocean seashore aforesaid.

2. The state of North Carolina shall continue as it always has to exercise jurisdiction over the territory within the littoral waters and ownership of the lands under the same within the boundaries of the state, subject only to the jurisdiction of the federal government over navigation within such territorial waters.

3. The governor and the attorney general are hereby directed to take all such action as may be found appropriate to defend the jurisdiction of the state over its littoral waters and the ownership of the lands beneath the same. (1947, c. 1031, ss. 1-3.)

Chapter 142. State Debt.

Art. 7. General Fund Bond Sinking Fund.

Sec.

142-50. Title of article.

142-51. Creation of fund.

142-52. Amount placed in fund.

142-53. Merger of general fund bond sinking funds previously created.

142-54. Provisions of Sinking Fund Commission Act applicable.

Art. 4. Sinking Fund Commission.

§ 142-37. Registration of securities; custody thereof.—Where practicable, securities purchased for sinking funds shall be registered as to the principal thereof in the name of "The state of North Carolina for the sinking fund for" (here briefly identify the sinking fund) and may be released from such registration by the signature of the state treasurer, but the treasurer shall not make such release unless and until the securities to be so released shall have been sold by the commission or until the commission shall have ordered such release. The treasurer may in his discretion keep all securities purchased for sinking funds in the vault in the revenue building or rent safety deposit boxes in responsible banks. (1925, c. 62, s. 8; 1947, c. 152.)

Editor's Note.—The 1947 amendment rewrote the second sentence.

Art. 5. Sinking Funds for Highway Bonds.

§ 142-44. Highway bonds; annual payments.

Editor's Note.—

As to transfer of sinking fund created by this section to general fund bond sinking funds, see § 142-53. As to repeal of this article in so far as it conflicts with article 7 of this chapter, see note under § 142-50.

Art. 6. Citations to Bond and Note Acts.

46. State Ports Bond Act of 1949. 1949, c. 820.

47. School plant construction and repair bonds. 1949, cc. 1020, 1249 (s. 22½), 1295.

Art. 7. General Fund Bond Sinking Fund.

§ 142-50. Title of article.—This article shall be known as "the state general fund bond sinking fund act of one thousand nine hundred forty-five." (1945, c. 3, s. 1.)

Laws Repealed.—Section 2 of the act inserting this article provides: "All laws and clauses of laws in conflict with this act, and in particular chapter six of the Session Laws of one thousand nine hundred and forty-three, the State Post-War Reserve Fund Act, in so far as it conflicts with the appropriations herein made, and chapter one hundred and eighty-eight of one thousand nine hundred and twenty-three, chapter one hundred and ninety-two of one thou-

sand nine hundred and twenty-five, chapters one hundred and forty-seven, one hundred and fifty-two and two hundred and nineteen of one thousand nine hundred and twenty-seven, in so far as contributions are required to be made to these sinking funds for the redemption of general fund bonds covered by these acts, which bonds are provided for under the general fund bond sinking fund established by this act, are hereby repealed.”

§ 142-51. Creation of fund.—There is hereby created a state general fund bond sinking fund for the purpose of retiring all outstanding general fund bonds and interest as they mature from time to time. (1945, c. 3, s. 1.)

§ 142-52. Amount placed in funds.—There is appropriated from the general fund of the state the sum of fifty-one million, five hundred eighty-five thousand and seventy-nine dollars (\$51,585,079.00), which funds shall be taken from the general fund surplus, as may now exist or as may accrue by June thirtieth, one thousand nine hundred and forty-five, as far as possible and any additional amount necessary to provide the sum of fifty-one million, five hundred eighty-five thousand, and seventy-nine dollars (\$51,585,079.00) shall be taken from the state post-war reserve fund established under §§ 143-191 to 143-194, and the amount necessary for this purpose is hereby appropriated from the state post-war reserve fund, which sum so appropriated shall be transferred to “the state general fund bond sinking fund” and shall be used exclusively for the purpose of retiring the principal and interest on outstanding general fund bonds authorized by and issued under the authority of the following acts of the legislature, to-wit:

Title of Issue	Chapter	Year
State Hospital	510	1909
Refunding	399	1909
Administration	66	1911
School for feeble minded	87	1911
Refunding	73	1911
Improvement	102	1913
Funding	107	1921
Educational and charitable	165	1921
Educational and charitable	162	1923
Educational and charitable	192	1925
Educational and charitable	147	1927
Great Smoky mountains park (Serial) ..	48	1927
Farm colony for women	219	1927
The state prison farm	152	1927
General fund bonds (Debit balance) ..	330	1933
Educational and charitable	296	1937

Title of Issue	Chapter	Year
State office building	365	1937
Permanent improvement	1	1938
Permanent improvement and school book	67	1939
Permanent improvement	240	1941
Permanent improvement	81	1941
Permanent improvement	86	1941
World War veterans loan	97	1927
World War veterans loan	298	1929

(1945, c. 3, s. 1; 1949, c. 655.)

Editor’s Note.—The 1949 amendment added the last two lines.

§ 142-53. Merger of general fund bond sinking funds previously created.—The general fund bond sinking funds heretofore created under authority of chapter one hundred and eighty-eight of the public laws of one thousand nine hundred and twenty-three, chapter one hundred and ninety-two of the public laws of one thousand nine hundred and twenty-five, chapter one hundred and forty-seven of public laws of one thousand nine hundred and twenty-seven, chapter one hundred and fifty-two of the public laws of one thousand nine hundred and twenty-seven, and chapter two hundred and nineteen of the public laws of one thousand nine hundred and twenty-seven for the purpose of retiring certain long term general fund bonds are hereby combined with, transferred to and made a part of “the state general fund bond sinking fund of one thousand nine hundred and forty-five,” and together with the sum of fifty-one million, five hundred eighty-five thousand, and seventy-nine dollars (\$51,585,079.00) appropriated by this law shall be used to retire the general fund bonds and interest as they may mature from time to time. (1945, c. 3, s. 1.)

Editor’s Note.—Acts 1923, ch. 188, referred to in this section, was codified as §§ 142-44 to 142-46.

§ 142-54. Provisions of sinking fund commission act applicable.—The moneys paid into “the state general fund bond sinking fund of one thousand nine hundred and forty-five” herein provided for, shall in all respects, be subject to the requirements, limitations and provisions of chapter sixty-two of the public laws of one thousand nine hundred and twenty-five, and as amended, and known as “the sinking fund commission act.” (1945, c. 3, s. 1.)

Editor’s Note.—The act referred to in this section was codified as §§ 142-30 to 142-45.

Chapter 143. State Departments, Institutions, and Commissions.

Art. 1. Executive Budget Act.

Sec.
143-34.1. Payrolls submitted to the assistant to the director of the budget; approval of payment of vouchers.

Art. 2. State Personnel Department.

143-35. State personnel department established.
143-36. Duties and powers of director and council; surveys, classifications, etc.; report of director.
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143-38. Further surveys; reconsideration and change of report.

Sec.
143-39. Payment of increments considered state personnel policy; increments to be considered in request for appropriations.
143-40. Director and council to fix holidays, vacations, hours, sick leave and other matters pertaining to state employment.
143-41. Director to determine qualifications of applicants for positions.
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143-43. Offices of state personnel department; department to employ clerical and necessary assistants.

Sec.

- 143-44. Director to determine the qualifications of state employees selected by heads of departments; persons employed on effective date deemed qualified.
- 143-45. Director to certify copies of reports to state auditor and budget bureau.
- 143-46. Exemptions; persons and employees not subject to this article.
- 143-47. Classifications and salaries established prior to effective date of article to remain in force until changed.

Art. 5. Checks on License Forms, Tags and Certificates Used or Issued.

- 143-106. Blank forms of licenses, etc., to be delivered to state auditor; monthly report to auditor; spoiled and damaged forms.
- 143-107. [Rewritten as § 143-106.]

Art. 8. Public Building Contracts.

- 143-128. Separate specifications for building contracts; responsible contractors.
- 143-129. Procedure for letting of public contracts; purchases from federal government by state, counties, etc.
- 143-135.1. State buildings exempt from municipal building requirements; consideration of recommendations by municipalities.

Art. 10. Various Powers and Regulations.

- 143-146. Execution of deeds for state-owned lands.

Art. 15. Commission on Interstate Co-Operation.

- 143-178. Senate members on interstate co-operation.
- 143-179. House members on interstate co-operation.
- 143-182. Members constituting senate and house council of American Legislators' Association.

Art. 18. Rules and Regulations Filed with Secretary of State.

- 143-198.1. State agencies and boards to file copy of certain administrative rules with clerks of superior courts; clerks to file as official records.

Art. 19. Roanoke Island Historical Association.

- 143-199. Association under patronage and control of state.
- 143-200. Members of board of directors; terms; appointment.
- 143-201. By-laws; officers of board.
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Art. 20. Recreation Commission.

- 143-205. Recreation commission created.
- 143-206. Definitions.
- 143-207. Membership; terms; removal; vacancies; meetings; expenses.
- 143-208. Duties of commission.

Sec.

- 143-209. Powers of commission.
- 143-210. Advisory committee.

Art. 21. State Stream Sanitation and Conservation.

- 143-211. Declaration of policy.
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- 143-213. Stream sanitation committee; creation.
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- 143-215.1. Control of new sources of pollution.
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Art. 22. State Ports Authority.

- 143-216. Creation of authority; membership.
- 143-217. Purposes of authority.
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- 143-230. Composition of commission.
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- 143-232. Authority to foster development of armories and facilities.
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Art. 24. Wildlife Resources Commission.

- 143-237. Title.
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- 143-244. Location of offices.
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- 143-246. Executive director; appointment, qualifications, duties, oath of office, and bond.
- 143-247. Transfer of powers, duties, jurisdiction, and responsibilities.
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- 143-252. Article not applicable to commercial fish or fisheries.
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- 143-254.1. Assent to act of Congress providing aid in fish restoration and management projects.

Art. 25. National Park, Parkway and Forests Development Commission.

- 143-255. Commission created; members appointed.
- 143-256. Appointment of commissioners; term of office.
- 143-257. Meetings; election of officers.
- 143-258. Duties of the commission.
- 143-259. The commission to make reports.
- 143-260. Compensation of commissioners.

Art. 26. State Education Commission.

- 143-261. Appointment and membership; duties.
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Art. 27. Settlement of Affairs of Certain Inoperative Boards and Agencies.

- 143-267. Release and payment of funds to state treasurer; delivery of other assets to director of the division of purchase and contract.
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- 143-272. Audit of affairs of board or agency; payment for audit and other expenses.

Art. 28. Communication Study Commission.

- 143-273. Creation of commission.
- 143-274. Definitions.
- 143-275. Membership of commission; term.
- 143-276. Duties of commission.
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Sec.

Art. 29. Commission to Study Care of the Aged and Handicapped.

- 143-279. Establishment and designation of commission.
- 143-280. Membership.
- 143-281. Appointment and removal of members.
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- 143-282. Duties of commission; recommendations.
- 143-283. Compensation.

Art. 30. Buggs Island Development Commission.

- 143-284. Commission created; membership; terms of office; vacancies.
- 143-285. Officers of commission; meetings; rules, regulations and bylaws; quorum.
- 143-286. Powers and duties.
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- 143-288. Expenses.
- 143-289. Contributions from certain counties and municipalities authorized; other grants or donations.
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Art. 31. Tort Claims against State Departments and Agencies.

- 143-291. Industrial commission constituted a court to hear and determine claims; damages.
- 143-292. Notice of determination of claim; appeal to full commission.
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Art. 32. Payroll Savings Plan for State Employees.

- 143-301. Authority of governor.
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- 143-303. Agreements of employees with heads of departments, etc.
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Art. 1. Executive Budget Act.

§ 143-4. Advisory Budget Commission.

In all matters where action on the part of the Advisory Budget Commission is required by this article, three (3) members of said Commission shall constitute a quorum for performing the duties or acts required by said commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768.)

Editor's Note.—

The 1951 amendment added the above paragraph at the end of this section. As the rest of the section was not changed by the amendment it is not set out.

§ 143-34.1. Payrolls submitted to the assistant to the director of the budget; approval of payment of vouchers.—All payrolls of all departments, institutions, and agencies of the state government shall, prior to the issuance of vouchers in payment therefor, be submitted to the assistant to the director of the budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the state auditor, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the assistant to the director of the budget. (1949, c. 718, s. 5.)

Art. 2. State Personnel Department.

§ 143-35. State personnel department established.—(1) Department distinct from budget bureau and under supervision of director.—There is hereby created and established a state personnel department (hereinafter referred to as "department") for the state of North Carolina. The department shall be separate and distinct from the budget bureau and shall be under the administration and supervision of a director appointed by the state personnel council. The salary of the director shall be fixed by the personnel council and shall not exceed that of the highest paid appointive head of any other state department, bureau, agency or commission. The director shall serve at the pleasure of the personnel council.

(2) State personnel council.—There is hereby created and established a state personnel council (hereinafter referred to as "council") for the purpose of advising and assisting the state personnel director in preparing, formulating and promulgating rules and regulations, determining and fixing job classifications and descriptions, job specifications and minimum employment standards, standards of salaries and wages, and any and all other matters pertaining to employment under this article. The state personnel council shall consist of seven members to be appointed by the governor of North Carolina on or before July 1, 1949. The council shall have the power to designate the member of said council who shall act as the chairman thereof. At least two members of the council shall be individuals of recognized standing in the field of personnel administration and who are not employees of the state, who are subject to the provisions of this article; at least two members of the council shall be individuals actively engaged in the management of a private business or industry; not more than two members of the council shall be individuals chosen from the employees of the state subject to the provisions of this article. The council shall meet at least one time in each calendar quarter of the year, or upon call of the governor, or of the director, or a member of the council, or at the request of the head of any department or agency when necessary to consider any appeal provided for hereunder. Five members of the council shall constitute a quorum. Notice of meetings shall be given members of the council by the director who shall act as secretary to the

council. The members of the council shall each receive seven dollars (\$7.00) per day including necessary time spent in traveling to and from their place of residence within the state to the place of meeting while engaged in the discharge of the duties imposed hereunder, and his necessary subsistence and traveling expenses. Members of the council who are the employees of the state, as provided hereunder, shall not receive any per diem for their services but such members shall receive traveling expenses and subsistence, while engaged in the discharge of their duties hereunder, at the same rate and in the same amount as provided for state employees without any deduction for loss of time from their employment. Two of the council members shall be appointed by the governor to serve for a term of two years. Two members shall be appointed to serve for a term of three years. Three members shall be appointed to serve for a term of four years and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four years each thereafter: Provided, however, that no two members appointed from the same occupational groups named in this article shall serve terms expiring on the same date. Any member appointed to fill a vacancy occurring in any of the appointments made by the governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member of the state personnel council shall not be considered a public officer, or as holding office within the meaning of article 14, section 7, of the constitution of this state, but such member shall be a commissioner for a special purpose. The governor may, at any time after notice and hearing, remove any council member for gross insufficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(3) Personnel officers representing state departments, agencies and commissions.—For the purpose of aiding and assisting in the operation and administration of this article, each state department, agency or commission shall appoint, or shall designate from among its present employees, a personnel officer to represent the department, agency or commission and the head of same in carrying out the provisions of this article within such department, agency or commission. All personnel officers designated hereunder shall serve in an advisory and consulting capacity to the state personnel director and the council in both intra-department and inter-department personnel policies and practices.

(4) Merit system council; responsibility of state personnel director; supervisor of merit examinations.—The merit system council created under the provisions of chapter 126 of the General Statutes, and all powers and duties heretofore exercised by the merit system council, shall continue in effect as provided in chapter 126 of the General Statutes: Provided, however, that the state personnel director shall be charged with the responsibility of carrying out the regulations and policies maintained and provided by the merit system council and the administration of same as applicable to individuals, employees and agencies of the state now subject to chapter 126 of the General Statutes, as amended, or as

the same from time to time may be amended, but excluding and excepting from the application of this article all employees of the county welfare departments and the county, city, county-city and district health departments, and that nothing herein contained shall be construed so as to alter, abridge or deprive the merit system council of the authority vested in it by virtue of § 126-14 of the General Statutes. The state personnel director shall select and appoint, with the advice and approval of the merit system council, and in accordance with the merit system regulations, a person designated as supervisor of merit examinations, who shall not be a member of the merit system council and who shall be charged with the performance of the duties and functions of supervisor of merit examinations as provided by chapter 126 of the General Statutes. (1949, c. 718, s. 1; c. 1174.)

Editor's Note.—Session Laws 1949, c. 718, rewrote this article, inserted § 143-34.1 and amended §§ 126-2, 126-3 and 126-16. Section 6 of the said chapter provides: "Nothing herein shall be construed as authorizing the fixing of classifications and descriptions, job specifications and employment standards, standards of salaries or wages, or necessary number of positions, or otherwise which cause the total funds required by any department, agency, bureau, or commission to exceed the funds appropriated for salaries and wages in that agency for either year of the biennium."

Session Laws 1949, c. 1174, changed the compensation of a member of the council from ten to seven dollars a day.

§ 143-36. Duties and powers of director and council; surveys, classifications, etc.; report of director.—The state personnel director, with the head of each department, agency, bureau or commission of the state government, shall, as soon as practicable after the ratification of this article, undertake a new survey and investigation of the needs for personal service in all state departments, agencies, bureaus or commissions subject to this article for the purpose of establishing job specifications and minimum employment standards, job descriptions, job classifications, and salary schedules, and shall eliminate any existing inequalities between salaries and/or classifications of employees of substantially equal qualifications rendering substantially similar service. The state personnel director, with the head of each department, agency, bureau or commission, shall, after making such survey and investigation and upon the information so assembled, and with the approval of the council, fix, determine and classify the necessary number of positions and employees in all state departments, bureaus, agencies and commissions, the type and nature of work to be performed in such positions and by employees, and shall fix, establish and classify a standard of salaries and wages with a minimum salary rate and a maximum salary rate and such intermediate salary rate or rates as may be deemed necessary and equitable to be paid for all such services and positions and to all employees of the state subject to the provisions of this article. When the personnel survey and investigation is completed with respect to a particular department, bureau, agency or commission, the state personnel director shall file a report with the governor and with the head of such department, bureau, agency or commission, setting out the number of allowable positions, the classification of the positions, and the duties to be performed and/or positions to be filled, and the salaries and wages to be paid

to each of the employees in said department, bureau, agency or commission, and the scale of increments to be granted at least once each year to each employee whose services have met the standard of efficiency as established by the state personnel director and approved by the council and governor: Provided, however, in establishing the standards of efficiency for the purpose of annual increments, the regulations shall provide that all employees whose services merit retention in service shall, as hereinafter set forth, be granted annual increments up to but not exceeding the intermediate salary step nearest to the middle of the salary range established for the respective classification and/or position, and those employees whose services meet higher standards, as formulated and fixed by the state personnel director and council, shall, as hereinafter set forth, be given annual increments up to but not exceeding the maximum of the salary range for the respective classification and/or position. (1949, c. 718, s. 1.)

§ 143-37. Contents of report to become fixed standard; effective date.—When said report with respect to any such department, bureau, agency or commission has been completed and filed with and approved by the governor, and also filed with the head of such department, bureau, agency or commission, the findings in said report shall then become the fixed standard for the number of allowable positions and employees, the classification of positions and the duties to be performed, and/or the positions to be filled, the salaries and/or wages to be paid, and the increments to be granted to all employees in the department, bureau, agency or commission, to which said report relates, and it shall thereupon be the duty of the head of such department, bureau, agency or commission, on the first day of the next month, beginning not less than thirty days subsequent to the date of the reception of said report by him, to put the same into effect, and thereupon with respect to such department, bureau, agency or commission, the classification of positions, the number of employees, the duties to be performed and/or the positions to be filled, the salaries and wages to be paid, and the increments to be granted, all as specified in said report, shall become the only allowable standard for and with respect to such department, bureau, agency or commission. (1949, c. 718, s. 1.)

§ 143-38. Further surveys; reconsideration and change of report.—It shall be the duty of the state personnel director upon request of the head of any state department, bureau, agency or commission, and also from time to time without such request, to make additional surveys in regard to, and to keep informed of, the needs for personal services in the several state departments, bureaus, agencies and commissions, and to reconsider the report hereinbefore provided for, and with the approval of the council and the governor, to make changes therein in accordance with such findings; and upon report by him to the head of any department, bureau, agency or commission, and to the governor, setting out such findings and changes, it shall be the duty of the head of such department, bureau, agency or commission, to put such findings and changes into effect on

the first day of the next month, beginning not less than thirty days after the date of receipt by him of such report: Provided, however, the state personnel director shall have the authority to make necessary individual adjustments within the framework of the approved salary and classification plan. (1949, c. 718, s. 1.)

§ 143-39. Payment of increments considered state personnel policy; increments to be considered in request for appropriations.—All salary ranges for state employees not exempted from this article shall contain a fixed and uniform scale of increments between the minimum and maximum salary rate as fixed and determined according to the provisions of § 143-36 of this article. It shall be considered a part of the personnel policy of this state that these increments or increases in pay shall be granted in accordance with standards and regulations fixed, determined and established by the state personnel director and the council as authorized and provided under the provisions of § 143-36 of this article. The head of each department, bureau, agency or commission, when making his request for the ensuing biennium shall take into account the annual and other increments based on efficiency standards as established, or as may be established, under the provisions of this article, for the employees of his department, bureau, agency or commission, and such head shall anticipate the amounts which shall be required during the biennium for the purpose of paying such increments, and shall include such amounts in his appropriations request, but in no case shall the amount estimated for increments based on efficiency standards exceed two-thirds the sum which would be required to grant efficiency increments to all the personnel of the agency then receiving, or who would receive during the first year of the biennium, the intermediate salary nearest the middle of the salary range established for the respective classification and/or position; provided, however, with the consent of the personnel council, state departments, bureaus, agencies or commissions with twenty-five (25) or less employees may exceed the two-thirds restrictions herein set up. (1949, c. 718, s. 1.)

§ 143-40. Director and council to fix holidays, vacations, hours, sick leave and other matters pertaining to state employment.—The state personnel director, upon the advice and approval of the council, shall fix, determine and establish the hours of labor in each state department, bureau, agency or commission, and is authorized and empowered to make all necessary rules and regulations with respect to holidays, vacations, sick leave or any other type of leave, and any and all other matters having direct relationship to services to be performed and the salaries and wages to be paid therefor, all of which shall be subject to the approval of the governor: Provided, however, that the amount of annual leave granted as a matter of right to each regular state employee shall not be less than one and one-fourth days per calendar month cumulative to at least thirty days, and that sick leave granted to each state employee shall not be less than ten days for each calendar year, accumulative from year to year. (1949, c. 718, s. 1.)

§ 143-41. Director to determine qualifications of applicants for positions.—The state personnel director, with the advice and approval of the council and governor, shall adopt rules and regulations to the end that applicants for positions in the various state departments, bureaus, agencies, and commissions covered by this article may file applications for state employment with the director, and it shall be the duty of the director to examine into the qualifications of each applicant within a reasonable period of time after the application is filed, and the director shall notify each applicant of the results of such examination in writing and shall certify and shall keep a list of persons so qualified. Said list shall be open to the inspection of the heads of the various departments, bureaus, agencies and commissions of the state, and such heads may from time to time fill positions from such lists. When any position covered by this article has remained unfilled for a period of ten days, it shall be the duty of the department, bureau, agency or commission in which the unfilled position exists to notify the director of the fact, and the director shall list the unfilled position, so long as it shall remain unfilled, on the list which he shall keep posted in his office where it shall be available on demand to any person seeking employment in various state agencies, departments, bureaus or commissions. The list of certified applicants and list of unfilled positions shall be presented to the council for its information at each regular meeting of the council. (1949, c. 718, s. 1.)

§ 143-42. Appeal provided in case of disagreement.—In the event there shall be a disagreement between the state personnel director and the head of any other department, bureau, agency or commission of the state or between the state personnel director and any employee subject to this article because of any ruling of the director upon any question involving such other department, bureau, agency or commission, or any of its positions, employees, or other matter within the scope and purview of this article, then the matters in dispute shall be heard by the council. Any employee or agency head may appeal from the decision of the council and the matter shall be heard by the governor and the decision or action of the governor thereon shall be final. (1949, c. 718, s. 1.)

§ 143-43. Offices of state personnel department; department to employ clerical and necessary assistants.—The board of public buildings and grounds shall provide the state personnel department with adequate offices in the city of Raleigh, North Carolina. The state personnel director shall be charged with the supervision and administration of all activities subject to the jurisdiction and control of the state personnel department and, subject to the approval of the council and governor, said director is hereby authorized to employ clerical and such other assistants as may be deemed necessary and adequate in order to carry out the purpose and intent of this article. For the purpose of establishing and fixing proper and adequate standards, classifications, job descriptions, specifications and salaries for technical, professional and skilled employees and for any other purposes pertinent to this article, the

director may, in cooperation with the head of any other state department, bureau, agency or commission, make use of the data, studies and services of any such department, bureau, agency or commission or the technical, professional or special knowledge or services of any employees of such department, bureau, agency or commission. (1949, c. 718, s. 1.)

§ 143-44. Director to determine the qualifications of state employees selected by heads of departments; persons employed on effective date deemed qualified.—All persons employed in any department, bureau, agency or commission of the state government on the effective date of this article shall be deemed qualified for the positions they hold or occupy, provided no person who has held any position for a period of less than six months on the effective date of this article shall be deemed qualified until he shall have completed six months of satisfactory service in such position or shall before that time have been examined and found qualified by the director in accordance with the rules and regulations of the council.

The selection and appointment of all personnel of all of the departments, bureaus, agencies or commissions of the state, shall, as heretofore, be exercised by the head of the department, bureau, agency or commission as to which the employment is to be performed, but, from and after the effective date of this article, such employment shall be subject to the approval of the state personnel director, as to whether such employees so selected meet the standards of qualifications established under this article, and, if such person so selected is found duly qualified according to such standards, the personnel director shall approve the employment if otherwise authorized and permissible under this article. Any employee of the state or any person seeking employment who has been found by the director not to be qualified for the position applied for may appeal the decision of the director to the council at its next regular meeting after he has received notice of disqualification. (1949, c. 718, s. 1.)

§ 143-45. Director to certify copies of reports to state auditor and budget bureau.—The state personnel director shall transmit to the state auditor and the budget bureau copies of his report or reports, or any changes in same, with respect to the various departments, bureaus, agencies and commissions, and the salaries and wages, including increments, for such positions and employees in the several departments, bureaus, agencies and commissions and the same shall be paid out of the appropriations for such purposes and in accordance with the schedule set out in said report or reports or any duly established changes made therein: Provided, however, that when the director of personnel shall have approved any employment or salary increase in any department, bureau or agency of the state government, the certification for payment by the assistant to the director of the budget, as required by § 143-34.1, shall not be construed as conferring upon or vesting in the assistant to the director of the budget any authority or control over the employment of personnel, salaries, wages, hours of labor, vacations, sick leave, classifications, standards, regulations and reports, matters, things, administra-

tion and functions committed and vested in this article to the jurisdiction and control of the state personnel director and council as set forth in this article. (1949, c. 718, s. 1.)

§ 143-46. Exemptions; persons and employees not subject to this article.—The provisions of this article shall not apply to certain persons and employees as follows: Persons employed solely on an hourly basis; public school superintendents; principals and teachers and other public school employees; instructional and research staff of the educational institutions of the state; professional staff of hospitals, asylums, reformatories and correctional institutions of the state; members of boards, bureaus, agencies, commissions, councils and advisory councils, compensated on a per diem basis; constitutional officers of the state and except as to salaries, their chief administrative assistant; officials and employees whose salaries are fixed by the governor, or by the governor and council of state, or by the governor subject to the approval of the council of state, or advisory budget commission, by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by the governor subject to the approval of a definitely named officer, agent, bureau, agency or commission of the state by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by statute or by virtue of a specific statutory method other than by the method provided by this article explicitly pertaining to such officials and/or employees. In all cases of doubt or where any question arises as to whether or not any person, official or employee is subject to the provisions of this article, the doubt, controversy or question shall be investigated and decided by the state personnel director with the approval of the council and such decision shall be final. Where the approval of any appointment, employment and/or salary is required by statute to be made by the budget bureau or assistant to the director of the budget (by whatever title or name), all such authority and power of approval, in whatever manner or form exercised, is hereby transferred to and vested in the state personnel director, and all such statutes shall be deemed to be amended to such extent. (1949, c. 718, s. 1.)

§ 143-47. Classifications and salaries established prior to effective date of article to remain in force until changed.—All classifications, grades, salaries, wages, hours of work, vacation, sick leave, positions and standards heretofore established by the division of personnel under the budget bureau prior to the effective date of this article shall remain in force and effect until the same are amended, altered, voided or replaced by the state personnel director and the council acting under the authority of this article. (1949, c. 718, s. 1.)

Editor's Note.—This article as rewritten by Session Laws 1949, c. 718, became effective April 1, 1949.

Art. 3. Division of Purchase and Contract.

§ 143-49. Powers and duties of director.

(b) To establish and enforce standard specifications which shall apply to all supplies, materials and equipment, purchased or to be purchased for the use of the State government for any of

its departments, institutions or agencies; there shall be included in the contract for the printing of the Session Laws of the General Assembly such specification as to the time limit within which, or the speed with which, such Session Laws are to be printed as to insure the speediest publication practicable so as to make possible an early distribution of the Session Laws after the adjournment of the General Assembly.

(g) To permit charitable, nonprofit corporations operating charitable hospitals, under such rules, regulations and procedures as the Advisory Budget Commission shall adopt, to purchase hospital supplies and equipment under contracts negotiated and entered into by the Division of Purchase and Contract for the purchase of hospital supplies and equipment for State sanatoria, hospitals and other medical institutions operated by the State or agencies of the State. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1.)

Cross Reference.—As to settlement of affairs of inoperative boards and agencies, see §§ 143-267 to 143-272.

Editor's Note.—The first 1951 amendment added the part of subsection (b) appearing after the semicolon and the second 1951 amendment added subsection (g). As subsections (a) and (c) through (f) were not affected by the amendment they are not set out.

§ 143-59. Rules and regulations covering certain purposes.

(f) Notwithstanding any of the provisions of this article, the director of purchase and contract, with the approval of the advisory budget commission, may follow whatever procedure is deemed necessary to enable the state, its institutions and agencies, to take advantage of the sale of any war surplus material sold by the federal government or its disposal agencies. (1931, c. 261, s. 11; 1945, c. 145.)

Editor's Note.—The 1945 amendment added the above subsection. As the original section was not otherwise changed by the amendment it is not set out.

Art. 4. World War Veterans Loan Administration.

Title I. "World War Veterans Loan Act of 1925."

§ 143-65. Name of title.

Editor's Note.—The War Veterans Loan Administration is now in process of liquidation. See § 165-11.

Session Laws 1951, c. 349, directs the board of advisers of the World War Veterans Loan Fund to complete the administration of all duties imposed upon them by Article 4 of Chapter 143 of the General Statutes by June 30, 1951, and provides that thereafter the provisions of said article, containing §§ 143-65 to 143-105, shall be eliminated from the General Statutes.

Art. 5. Check on License Forms, Tags and Certificates Used or Issued.

§ 143-106. Blank forms of licenses, etc., to be delivered to State Auditor; monthly report to Auditor; spoiled and damaged forms. — The Auditor shall have the authority to require State departments and institutions to furnish him with complete information as to all blank forms of licenses, tags, or certificates received by them. At his request, the State departments or agencies issuing and delivering licenses, tags, or certificates shall furnish the Auditor with complete copies or lists of such issuances. If there be any of such blank license forms, tags, or certificates spoiled or in any way damaged so as to be incapable of being used, all such spoiled license forms, tags, or certificates shall be kept by such department or agency subject to the audit and

inspection of the Auditor. Any license forms, tags, or certificates being used by the department or agency as a printer's copy, or in any other way being used for a sample, shall be first marked "void" in bold letters on the face of the form. These voided licenses or certificates shall be presented to the Auditor or his representatives before being released. The Auditor may, at his discretion, allow the use of unnumbered license forms or certificates provided the number and amount is entered thereon by an accounting or bookkeeping machine meeting his approval. (1931, c. 398, s. 1; 1951, c. 1010, s. 2.)

Editor's Note.—The 1951 amendment rewrote this section. Section 4 of the amendatory act provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

§ 143-107: Rewritten as § 143-106 by Session Laws 1951, c. 1010, s. 2.

Art. 7. Inmates of State Institutions to Pay Costs.

§ 143-117. Institutions included.—All persons admitted to the State Hospital at Raleigh, State Hospital at Morganton, State Hospital at Goldsboro, Casswell Training School at Kinston, Stonewall Jackson Training School for Boys at Concord, the State Home and Industrial School for Girls at Samarcand, the East Carolina Training School at Rocky Mount, the Morrison Training School for Negro Boys in Richmond County, the School for the Deaf at Morganton, and the North Carolina Sanatorium for the Treatment of Tuberculosis at Sanatorium, be and they are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions. (1925, c. 120, s. 1; 1949, c. 1070.)

Editor's Note.—The 1949 amendment struck out "the School for the Blind and Deaf at Raleigh" from the list of institutions named in this section.

Art. 8. Public Building Contracts.

§ 143-128. Separate specifications for building contracts; responsible contractors.—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or altering of buildings for the State, when the entire cost of such work shall exceed fifteen thousand dollars (\$15,000.00), must have prepared separate specifications for each of the following branches of work to be performed: 1. Heating and ventilating and accessories. 2. Plumbing and gas fitting and accessories. 3. Electrical installations. 4. Air conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories. All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the state or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work. When the estimated cost of work to be performed in any single subdivision is less than one thousand dollars (\$1,000.00), the

same may be included in one of the several other contracts, irrespective of total project cost.

Each separate contractor shall be directly liable to the state of North Carolina and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording, "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the state for the erection, construction or alteration of any building or buildings. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1.)

Editor's Note.—The 1945 amendment added the second paragraph. The 1949 amendment substituted "fifteen thousand dollars" for "ten thousand dollars" in the first sentence of the first paragraph and added the last sentence thereto.

For temporary act authorizing the hospitals board of control to construct, alter, remove, etc., buildings upon property at Camp Butner without complying with the provisions of this article, see Session Laws 1949, c. 1230.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by state, counties, etc.—No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars (\$2,500.00) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than one thousand dollars (\$1000.00), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the state, or of any institution of the state government, or of any county, city, town, or other subdivision of the state, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the state government, or of a state institution, as distinguished from a board or governing body of a subdivision of the state, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the state of North Carolina.

Where the contract is to be let by a county, city, town or other subdivision of the state, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision. Provided, if there is no newspaper published in the county and the estimated cost of the contract is less than two thousand dollars (\$2000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door not later than one week before the opening of the proposals in answer thereto, and in the case of a city, town or other subdivision wherein there is no newspaper published and the estimated cost of the contract is less than two thousand dollars (\$2000.00), such advertisement may be either published in some

newspaper as required herein or posted at the courthouse door of the county in which such city, town or other subdivision is situated and at least one public place in such city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this article and no board or governing body of the state or subdivision thereof shall assume responsibility for construction or purchase contracts or guarantee the payments of labor or materials therefor.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bid is in excess of the funds available for such purpose, such board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned and may award such contract to such bidder if such bidder will agree to perform the same, without making any substantial changes in the plans and specifications, at a sum within the funds available therefor. If the contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, the said letting and make such changes in the plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor. No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a certified check on some bank or trust company insured by the federal deposit insurance corporation, in an amount equal to not less than five per cent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within ten days after the award or fails to give satisfactory surety as required herein.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond in some surety company authorized to do business in the State, or require a deposit of money, certified check or government securities for the full amount of

said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of the government for which the work is to be performed until the contract has been carried out in all respects.

Nothing in this section shall operate so as to require any public agency to enter into a contract that will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the state or federal government.

Any board or governing body of the state or of any institution of the state government or of any county, city, town or other subdivision of the state may enter into any contract with the United States of America or any agency thereof for the purchase, lease or other acquisition of any apparatus, supplies, materials or equipment without regard to the provisions of this section which require:

- (1) The posting of notices or public advertising for proposals or bids.
- (2) The inviting or receiving of competitive bids.
- (3) The delivery of purchases before payment.
- (4) The posting of deposits or bonds or other sureties.
- (5) The execution of written contracts.

The director of the division of purchase and contract, the governing board of any county, city, town or subdivision may designate any officeholder or employee of the state, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by the United States of America, or any agency thereof, and may authorize such person to make any partial or down payment or payment in full that may be required by regulations of the United States of America or any agency thereof in connection with such bid or bids. (1931, c. 338, s. 1; 1933, cc. 50, 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2.)

Local Modification.—Guilford: 1949, c. 440; Transylvania: 1947, c. 828 (temporary); City of Greensboro: 1949, c. 440; 1951, c. 707, ss. 1, 5; Durham and city of Durham: 1951, c. 506; City of Wilmington: 1951, c. 881; City of Winston-Salem: 1951, c. 224.

Editor's Note.—The 1945 amendment added the last two paragraphs. The 1949 amendment made changes in the seventh paragraph. The 1951 amendment inserted the words "requiring the estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars (\$2,500.00)" in the first paragraph and rewrote the seventh paragraph.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 423.

The purpose of this section is to prevent favoritism, corruption, fraud and imposition in the awarding of public contracts by giving notice to the prospective bidders and thus assuring competition, which in turn guarantees fair play and reasonable prices in contracts involving the expenditure of a substantial amount of public money. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484.

This section applies only to contracts where the bidders have the right to name the price for which they are willing to furnish supplies and materials. It has no application whatever to a contract between a municipality and a public utility, where there can be no competition between bidders because the municipality or the state has the power and authority to fix the price of the service to be rendered or the commodity to be furnished. Muller v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484.

The terms "apparatus," "materials" and "equipment," used in this section, denote particular types of tangible personal property and could not be construed to include electric current. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484.

The word "supplies" in the section is used in conjunction with the term "apparatus," "materials" and "equipment," and its meaning is confined to property of like kind and nature. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484.

But Contractor May Recover on Quantum Meruit.—Where the work under the contract has been actually done and accepted, the county, city or town is bound on a quantum meruit for the reasonable and just value of the work and labor done and material furnished. Hawkins v. Dallas, 229 N. C. 561, 50 S. E. (2d) 561.

Contract Made in Violation of This Section Is Void.—A contract involving more than \$1,000.00 let without advertisement as required by this section is void, and the contractor may not recover on it. Hawkins v. Dallas, 229 N. C. 561, 50 S. E. (2d) 561.

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

Local Modification.—Durham and city of Durham: 1951, c. 506; City of Greensboro: 1951, c. 707, s. 5; Guilford: 1947, c. 78, s. 3; City of Wilmington: 1951, c. 881.

§ 143-132. Minimum number of bids for public contracts.—No contracts to which G. S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective line of endeavor, when the estimated cost of the project exceeds the sum of fifteen thousand dollars (\$15,000.00); however, this section shall not apply to contracts which are negotiated as provided for in § 143-129. (1931, c. 291, s. 3; 1951, c. 1104, s. 3.)

Editor's Note.—The 1951 amendment rewrote this section. The reference to "section 2 of this act" at the end of the section refers to the seventh paragraph of section 143-129.

§ 143-135. Limitation of application of article.—This article shall not apply to the State or to subdivisions of the State of North Carolina in the expenditure of public funds when the total cost of any repairs, completed project, building, or structure shall not exceed the sum of fifteen thousand dollars (\$15,000.00), if the repairs, completed project, building, or structure are performed or accomplished by or through duly elected officers or agents. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6.)

Local Modification.—For temporary act applicable to Duplin, Johnston, Lincoln, Nash, New Hanover, Swain, Wake and Wayne counties, see Session Laws 1947, c. 1038.

For temporary act applicable to Franklin and Wayne counties, see Session Laws 1949, c. 225.

Editor's Note.—The 1949 and 1951 amendments rewrote this section.

Temporary Amendment Relating to Hospitals Board of Control.—Session Laws 1951, c. 37, ratified February 8, 1951, amended this section by adding at the end thereof a new sentence reading as follows: "From and after the ratification of this act and until the first day of January 1953, this article shall not apply to the North Carolina Hospitals Board of Control in the repair, erection and completion of projects, buildings or structures at Camp Butler where the total cost of any such project, building or structure does not exceed the sum of \$50,000.00."

§ 143-135.1. State buildings exempt from municipal building requirements; consideration of recommendations by municipalities.—Buildings constructed by the State of North Carolina or any agency or institution of the State under plans and specifications approved by the budget bureau

shall not be subject to inspection by any municipal authorities and to municipal building codes and requirements. Inspection fees fixed by municipalities shall not be applicable to such construction, except where inspection is requested by the owning agency. Municipal authorities may, however, inspect any plans or specifications for any such construction and all recommendations made by them with respect thereto shall be given careful consideration by the budget bureau. (1951, c. 1104, s. 4.)

Art. 9. Building Code.

§ 143-139. Building code council created; powers and duties; application of building code.

Local Modification.—Durham and City of Durham: 1945, c. 463.

Art. 10. Various Powers and Regulations.

§ 143-146. Execution of deeds for state-owned lands.—The governor of the State is hereby authorized and empowered to execute a deed in the manner provided by G. S. 143-148 to any land which is not needed for purposes of the State government, the title to which is vested in the State, or any State institution, department or agency upon the application of the trustees or directors of such institution or the board, commission or State officer having such property in charge. The application shall show that such conveyance is for the best interests of the State or such institution, department or agency and shall be approved by the council of State.

All conveyances heretofore made by the governor, attested by the Secretary of State and authorized by the council of state, in the manner provided by G. S. 143-148 of any lands, the title to which was vested in the State for the use of any State institution, department or agency or vested in the State for any other purpose, are hereby ratified and validated. (1917, c. 129; 1951, c. 18; C. S. 7524.)

Editor's Note.—The 1951 amendment, which rewrote this section and added the second paragraph, became effective February 1, 1951.

Art. 12. Law Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. Law enforcement officers' benefit and retirement fund.

(d) The said board of commissioners shall have control of all payments to be made from such fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this article, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining any benefits under this article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law. The board of commissioners shall have authority to determine the membership eligibility or status of any

member or applicant of any and all of those who come within the categories of law enforcement officers named in subsection (m) of this section in accordance with general rules and regulations adopted by the board and the decision of the board of commissioners as to such membership eligibility or status shall be final.

(i) The board of commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this article, he shall voluntarily pay into the fund herein created a percentage of his monthly salary, which percentage shall be determined by the said board: Provided, that any officer so voluntarily contributing to the fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the retirement fund herein provided for, shall voluntarily pay into the fund a monthly amount to be determined by the said board, based upon such officer's average monthly income.

The board of commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the fund for credit to the individual account of such member, either or both: (1) an amount which, when taken with any additional amount which may be permitted by the board to be paid on behalf of such member, shall not exceed in any year five per cent (5%) of such member's compensation; and (2) a sum not to exceed the value of prior service of such member as determined by the board of commissioners; such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the board of commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the board of commissioners shall determine on the basis of the tables and rate of interest last adopted by the board of commissioners for this purpose: Provided, however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town, or other subdivi-

vision of government upon the death or withdrawal from the fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the state of North Carolina to finance and contribute, for the benefit of each member employed by the state as a law enforcement officer an amount equal to the value of his prior service and the cost of matching his contribution. Such contribution or financing on the part of the state shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the fund of a member such sums credited to that individual member's account shall revert to the general fund or highway fund of the state of North Carolina according to the source of the original appropriation. The board of commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the state for those law enforcement officers whose salary is paid out of the general fund, and from the highway fund of the state for those law enforcement officers whose salary is paid out of the highway fund appropriation in such amount as may be necessary to pay the state's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other state appropriations and in the sums and amounts as determined by the board of commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the state of North Carolina shall apply only to those members who are law enforcement officers of the state of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the teachers' and state employees' retirement system provided by chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the law enforcement officers' benefit and retirement fund. (1949, c. 1055; 1951, c. 382.)

Editor's Note.—The 1949 amendment added the last two paragraphs of subsection (i), and the 1951 amendment added the last sentence of subsection (d). As the rest of the section was not changed by the amendments, only subsections mentioned are set out.

Policeman Excluded from Local Governmental Employees' Retirement System.—Policeman, who is entitled to the benefits of this section, is not eligible to become a member of the local governmental employees' retirement system, set out in § 128-24(2). *Gardner v. Board of Trustees*, 226 N. C. 465, 38 S. E. (2d) 314, 315.

Section Not Intended to Compensate Officers Making Arrests.—The additional cost in criminal cases provided by this section is not intended to be used to compensate the officers who make the arrests or participate in the prosecution, but is paid to the state treasurer and by him disbursed for the purposes of the Law Enforcement Officers' Retirement Act. *Gardner v. Board of Trustees*, 226 N. C. 465, 38 S. E. (2d) 314, 316.

Art. 15. Commission on Interstate Co-Operation.

§ 143-178. Senate members on interstate co-operation.—The president of the senate at each regular session of the general assembly shall designate five members of the senate as senate mem-

bers of the commission on interstate co-operation. (1937, c. 374, s. 1; 1947, c. 578, s. 1.)

The 1947 amendment rewrote this section.

§ 143-179. House members on interstate co-operation.—The speaker of the house of representatives at each regular session of the general assembly shall designate five members of the house as house members of the commission on interstate co-operation. (1937, c. 374, s. 2; 1947, c. 578, s. 2.)

The 1947 amendment rewrote this section.

§ 143-180. Governor's committee on interstate co-operation.

The governor may, however, in his discretion, appoint one additional member of the said commission who is not an administrative official. (1937, c. 374, s. 3; 1949, c. 1065.)

Editor's Note.—The 1949 amendment added the above sentence at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

§ 143-181. North Carolina commission on interstate co-operation.—There is hereby established the North Carolina commission of interstate co-operation. This commission shall be composed of fifteen regular members, namely:

The five members named by the president of the senate;

The five members of the house designated by the speaker, and

The five members of the governor's committee on interstate co-operation.

The governor, the president of the senate and the speaker of the house of representatives shall be ex-officio honorary non-voting members of this commission. Said commission shall meet before the adjournment of each regular session of the general assembly in the city of Raleigh and at such meeting organize by the election of a chairman and secretary thereof. (1937, c. 374, s. 4; 1947, c. 578, s. 3.)

Editor's Note.—The 1947 amendment rewrote the last sentence and made other changes.

§ 143-182. Members constituting senate and house council of American Legislators' Association.—The said members of the commission named by the president of the senate and the speaker of the house shall function during the regular sessions of the legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this state the senate council and house council of the American Legislators' Association. The incumbency of each administrative member of this commission shall extend until the first day of February next following his appointment, and thereafter until his successor is appointed. (1937, c. 374, s. 5; 1947, c. 578, s. 4.)

Editor's Note.—The 1947 amendment struck out the words "standing committee of the senate and the said standing committee of the house of representatives" near the beginning of the section and substituted in lieu thereof the words "members of the commission named by the president of the senate and the speaker of the house."

§ 143-183. Functions and purpose of commission.

Editor's Note.—The word "state" in the sixth line of subsection (2) of this section should read "states."

§ 143-185. Reports to the governor and gen-

eral assembly; expenses; employment of secretary, etc.

The governor and the council of state are authorized to allocate from the contingency and emergency fund such sums as they shall find proper to provide for the necessary expenses which said commission is authorized to incur, as hereinbefore provided. (937, c. 374, s. 8; 1947, c. 578, s. 5.)

Editor's Note.—The 1947 amendment directed that the above sentence be added at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Art. 17. State Post-War Reserve Fund.

§ 143-191. Appropriation for fund.

Editor's Note.—As to repeal of this article in so far as it conflicts with §§ 142-50 to 142-54, see note under § 142-50.

Art. 18. Rules and Regulations Filed with Secretary of State.

§ 143-195. Certain state agencies to file administrative regulations or rules of practice with secretary of state; rate, service or tariff schedules, etc., excepted.

For comment on this and the three following sections, see 21 N. C. Law Rev. 328.

Cited in *State v. Speizman*, 230 N. C. 459, 53 S. E. (2d) 533.

§ 143-198.1. State agencies and boards to file copy of certain administrative rules with clerks of superior courts; clerks to file as official records.

—In addition to the requirements hereinbefore made in this article, every agency and administrative board of the state of North Carolina created by statute and authorized to exercise regulatory, administrative, or quasi-judicial functions, shall within ninety days of the ratification of this section file with the clerk of the superior court of each county in North Carolina, a certified indexed copy of all general administrative rules and regulations or rules of practice and procedure, the violation of which would constitute a crime, formulated or adopted by such agency or administrative board for the performance of its functions or for the exercise of its authority, and shall also mail to each member of the general assembly of 1949 a similar certified indexed copy.

In addition to the original statement filed with each clerk of the superior court, as required herein, each such agency or board shall, within fifteen days of the adoption of any additional or amendatory rule or regulation, file with each clerk of the superior court a certified indexed copy of such new or amendatory rule or regulation.

The clerk of the superior court of each county shall file as part of the records of his office all such rules and regulations. (1949, c. 378.)

Editor's Note.—The act inserting this section was ratified on March 17, 1949.

For a brief comment on this section, see 27 N. C. Law Rev. 408.

Art. 19. Roanoke Island Historical Association.

§ 143-199. Association under patronage and control of state.—Roanoke Island Historical Association, Incorporated is hereby permanently placed under the patronage and control of the state. (1945, c. 953, s. 1.)

§ 143-200. Members of board of directors; terms; appointment.—The governing body of said

association shall be a board of directors consisting of the governor of the state, the attorney general and the director of the state department of archives and history as ex officio members, and the following twenty-one members: J. Spencer Love, Greensboro; Miles Clark, Elizabeth City; Mrs. Richard J. Reynolds, Winston-Salem; D. Hiden Ramsey, Asheville; Mrs. Charles A. Cannon, Concord; Dr. Fred Hanes, Durham; Mrs. Frank P. Graham, Chapel Hill; Bishop Thomas C. Darst, Wilmington; W. Dorsey Pruden, Edenton; John A. Buchanan, Durham; William B. Rodman, Jr., Washington; J. Melville Broughton, Raleigh; Melvin R. Daniels, Manteo; Paul Green, Chapel Hill; Samuel Selden, Chapel Hill; R. Bruce Etheridge, Manteo; Theodore S. Meekins, Manteo; Roy L. Davis, Manteo; M. K. Fearing, Manteo; A. R. Newsome, Chapel Hill. The members of said board of directors herein named other than the ex officio members, shall serve for a term of two years and until their successors are appointed. Appointments thereafter shall be made by the membership of the association in regular annual meeting or special meeting called for such purpose, and in the event the association through its membership should fail to make such appointments, then the appointments shall be made by the governor of the state. Vacancies occurring on the board of directors shall be filled by the governor of the state. (1945, c. 953, s. 2.)

§ 143-201. By-laws; officers of board.—The said board of directors when organized under the terms of this article shall have authority to adopt by-laws for the organization and said by-laws shall thereafter be subject to change only by three fifths vote of a quorum of said board of directors; the board of directors shall choose from its membership or from the membership of the association a chairman, a vice chairman, a secretary and a treasurer, which offices in the discretion of the board may be combined in one, and also a historian and a general counsel. The board also in its discretion may choose one or more honorary vice chairmen. (1945, c. 953, s. 3.)

§ 143-202. Exempt from taxation; gifts and donations.—The said association is and shall be an educational and charitable association within the meaning of the laws of the state of North Carolina, and the property and income of such association, real and personal, shall be exempt from all taxation. The said association is authorized and empowered to receive gifts and donations and administer the same for the charitable and educational purposes for which the association is formed and in keeping with the will of the donors, and such gifts and donations to the extent permitted by law shall be exempted from the purpose of income taxes and gift taxes. (1945, c. 953, s. 4.)

§ 143-203. State auditor to make annual audit.—It shall be the duty of the state auditor to make an annual audit of the accounts of the association and make a report thereof to the general assembly at each of its regular sessions. (1945, c. 953, s. 5.)

§ 143-204. Authorized allotment from contingency and emergency fund.—The governor and council of state, in the event state aid is reasonably necessary for the restoration and production of the pageant known and designated as The Lost

Colony, are authorized and empowered to allot a sum not exceeding ten thousand dollars (\$10,000) a year from the contingency and emergency fund to aid in the restoration and production of said pageant, such allotment, however, to be made only upon evidence submitted to the governor and council of state by the association that during the immediately preceding season of production because of inclement weather or other circumstances or factors beyond the control of the association, the said Lost Colony was operated at a deficit. (1945, c. 953, s. 6.)

Art. 20. Recreation Commission.

§ 143-205. Recreation commission created.—There is hereby created an agency to be known as the North Carolina Recreation commission. (1945, c. 757, s. 1.)

Editor's Note.—Session Laws 1945, c. 757, s. 7, appropriated for the purpose of this article the sum of \$7,500.00 for each year of the biennium 1945-1947 out of the general fund of the state.

§ 143-206. Definitions.—(1) "Recreation," for the purposes of this article, is defined to mean those activities which are diversionary in character and which aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure time nature.

(2) "Commission" means the North Carolina recreation commission.

(3) "Committee" means the advisory recreation committee. (1945, c. 757, s. 2.)

§ 143-207. Membership; terms; removal; vacancies; meetings; expenses.—(1) The recreation commission shall consist of seven members, appointed by the governor, and the governor, superintendent of public instruction, commissioner of public welfare and director of the department of conservation and development as members *ex officio*.

(2) In making appointments to the commission, the governor shall choose persons, in so far as possible, who understand the recreational interests of rural areas, municipalities, private membership groups and commercial enterprises. The commission shall elect, with the approval of the governor, one member to act as chairman. At least one member of the commission shall be a woman, and at least one member shall be a negro. A majority of the commission shall constitute a quorum, but only when at least four of the appointed members are present.

(3) For the initial term of the appointed members of the commission, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, and two for a term of six years; and thereafter, the successor of each member shall be appointed for a term of four years and until his successor is appointed and qualified.

(4) Any appointed member of the commission may be removed by the governor.

(5) Vacancies in the commission shall be filled by the governor for the unexpired term.

(6) The commission shall meet quarterly in January, April, July, and October, on a date to be fixed by the chairman. The commission may be

convoked at such other times as the governor or chairman may deem necessary.

(7) Members of the commission shall receive reasonable travel and maintenance expenses while attending meetings, but they shall not be reimbursed for travel and maintenance expenses for longer than four days for any one meeting. (1945, c. 757, s. 3.)

§ 143-208. Duties of commission.—It shall be the duty of the commission:

(1) To study and appraise recreational needs of the state and to assemble and disseminate information relative to recreation.

(2) To cooperate in the promotion and organization of local recreational systems for counties, municipalities, townships, and other political subdivisions of the state, and to aid them in designing and laying out recreational areas and facilities, and to advise them in the planning and financing of recreational programs.

(3) To aid in recruiting, training, and placing recreation workers, and promote recreation institutes and conferences.

(4) To establish and promote recreation standards.

(5) To cooperate with state and federal agencies, the recreation advisory committee, private membership groups, and with commercial interests in the promotion of recreational opportunities.

(6) To submit a biennial report of its activities to the governor. (1945, c. 757, s. 4.)

§ 143-209. Powers of commission.—The commission is hereby authorized:

(1) To make rules and regulations for the proper administration of its duties.

(2) To accept any grant of funds made by the United States, or any agency thereof, for the purpose of carrying out any of its functions.

(3) To accept gifts, bequests, devises, and endowments. The funds, if given as an endowment, shall be invested in such securities as designated by the donor, or, if there is no designation, in those in which the state sinking fund may be invested. All such gifts, bequests, devises and all proceeds from such invested endowments, shall be used for carrying out the purposes for which they are made.

(4) To administer all funds available to the commission.

(5) To act jointly, when advisable, with any other state agency, institution, department, board or commission in order to carry out the recreation commission's objectives and responsibilities. No activity of the commission, however, shall be allowed to interfere with the work of any other state agency.

(6) To employ, with the approval of the governor, an executive director, and upon the recommendation of the executive director, such other persons as may be needed to carry out the provisions of this article. The executive director shall act as secretary to the commission. (1945, c. 757, s. 5.)

§ 143-210. Advisory committee.—The governor shall name a recreation advisory committee consisting of thirty members who shall serve for a term of two years. The governor shall name one member to act as chairman of the committee.

Vacancies occurring on the committee shall be filled by the governor for the unexpired term.

Members of the committee shall represent, in so far as feasible, all groups and phases of beneficial recreation in the state.

The committee shall meet once each year with the recreation commission at a time and place to be fixed by the governor. Members of the committee shall serve without compensation.

The committee shall act in an advisory capacity to the recreation commission, discuss recreational needs of the state, exchange ideas, and make to the commission recommendations for the advancement of recreational opportunities. (1945, c. 757, s. 6.)

Art. 21. State Stream Sanitation and Conservation.

§ 143-211. Declaration of policy.—It is hereby declared to be the policy of the State that the water resources of the State shall be prudently utilized in the best interest of the people. To achieve this purpose, the government of the State shall assume responsibility for the quality of said water resources. The maintenance of the quality of the water resources requires the creation of an agency charged with this duty, and authorized to establish methods designed to protect the water requirement for health, recreation, fishing, agriculture, industry, and animal life. This agency shall establish and maintain a program adequate for present needs, and designed to care for the future needs of the State. (1951, c. 606.)

Editor's Note.—Session Laws 1951, c. 606, rewrote this article which was formerly captioned "State Stream Sanitation and Conservation Committee" and comprised §§ 143-211 through 143-215.1, codified from Session Laws 1945, c. 1010 and Session Laws 1947, c. 786.

§ 143-212. Definitions.—The terms used in this article are defined as follows:

(1) The term "committee" shall mean the committee in the North Carolina State board of health as hereinafter provided, and the term "member" shall mean member of said committee.

(2) The term "waters" shall mean any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State or any portion thereof, including those portions of the Atlantic Ocean over which the State has jurisdiction.

(3) The term "waste" shall mean and include the following:

(a) "Sewage" which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

(b) "Industrial waste" which shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resource.

(c) "Other waste" which shall mean sawdust, shavings, lime, refuse, offal, oil, tar chemicals, and

all other substances, except industrial waste and sewage, which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

(d) The terms "waste," "industrial waste," and "other wastes" shall not be construed to include silt, soil and its natural content which may in anywise be discharged into streams.

(4) The term "person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, government agencies, or private or public corporations organized or existing under the laws of this State or any other State or country.

(5) Whenever reference is made in this article to the "discharge of waste," it shall be interpreted to include the discharge of wastes into any unified sewerage system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State.

(6) The term "pollution" means a condition of any waters (as determined by standardized tests under conditions and procedures to be prescribed by official regulations to be issued under authority of this article) which is in contravention of the standards established and applied to such waters pursuant to § 143-215.

(7) The term "standard" or "standards" means such measure or measures of the quality of waters as are established by the committee pursuant to § 143-215.

(8) The term "sewer system" means pipe lines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

(9) The term "treatment works" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

(10) The term "disposal system" means a system for disposing of sewage, industrial waste or other wastes, and including sewer systems and treatment works.

(11) The term "outlet" means the terminus of a sewer system, or the point of emergence of any sewage, industrial waste or other wastes or the effluent therefrom, into the waters of the State.

(12) The term "watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed designated by the committee for purposes of §§ 143-215, 143-215.1 and 143-215.2 to be defined by the committee in its official regulations.

(13) The term "effective date" means the date, as established pursuant to § 143-215 and announced by official regulations of the committee, after which the provisions of §§ 143-215.1 and 143-215.2 shall become applicable and enforceable, with respect to persons within one or more watersheds designated by the committee. (1951, c. 606.)

§ 143-213. Stream sanitation committee; creation.—(a) Establishment of Committee.—For the purpose of administering this article, there is hereby created within the State board of health a permanent committee to be known as the "State stream sanitation committee" which shall be composed of eight members as follows: The chief engineer of the State board of health, ex officio, the chief engineer of the water resources and engineering division of the department of conservation and development, ex officio, and six members appointed by the governor, one who shall at the time of appointment be actively connected with and have had production experience in the field of agriculture, one who shall at the time of appointment be actively connected with and have had experience in the wildlife activities of the State, two who shall at the time of appointment be actively connected with and have had practical experience in waste disposal problems of municipal government, and two who shall at the time of appointment be actively connected with and have had industrial production experience in the field of industrial waste disposal. Of the members initially appointed by the governor, two shall serve for terms of two years each, two shall serve for terms of four years each, and two shall serve for a term of six years. Thereafter, all appointments shall be for terms of six years. Ex-officio members shall have all the privileges, rights, powers and duties held by appointed members under the provisions of this article except the right to vote.

(b) All appointments by the governor, except the initial appointments, shall be made during a session of the General Assembly and shall be subject to the confirmation of the Senate; except that appointments made to fill vacancies occurring by reason of death, resignation or removal from office as provided below shall be valid until the first convening of the General Assembly following such interim appointment. In each instance the appointment shall be of a person of experience in the same field as that of the member who is being replaced. The governor may at any time, after notice and hearing, remove any member for gross inefficiency, neglect of duty or other sufficient cause.

(c) Initial Appointments.—In order to make available to the State the benefit of the six years of study by the State stream sanitation and conservation committee created for that purpose by the legislature of 1945, all members appointed by the governor initially, except the member who shall have had experience with wildlife activities, shall be from the present membership of the State stream sanitation and conservation committee.

(d) Compensation of Committee Members.—No salary or other compensation, for services thereon, shall be allowed members of the committee who already receive compensation as officials or employees of State departments. Service on the committee is to be considered as part of the duties of such officials as representatives of the respective departments. Reimbursement for travel shall be made from travel funds available in their respective departments. The other members shall receive ten dollars (\$10.00) per day, including necessary time spent in traveling to and from their place of residence within the State to

any place of meeting or while traveling on official business of the committee. In addition, they shall receive mileage according to State practice while going to and from any place of meeting, or when on official business of the committee. (1951, c. 606.)

§ 143-214. Organization of committee; meetings; executive secretary.—(a) First Meeting; Organization; Rules; Regulations.—The committee shall, within 30 days after its appointment, meet and organize, and elect from among its members a chairman and such other officers as it may choose for such terms as may be specified by the committee in its rules and regulations. The chairman may appoint members to such committees as the work of the committee may require.

(b) Meeting of Committee.—The committee shall meet regularly, at least once every six months, at places and dates to be determined by the committee. Special meetings may be called by the chairman on his own initiative, and must be called by him at the request of two or more members of the committee. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum.

(c) Executive Secretary.—The committee shall appoint an executive secretary, who shall be a well qualified individual, fully trained and experienced in the field of waste disposal. Such executive secretary shall be the administrative officer of the committee and shall have the authority to perform in the name of the committee such functions and duties of the committee as shall be delegated to him by formal resolution. The executive secretary shall:

(1) Attend all meetings, but without the power of voting,

(2) Keep an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work, and shall make these records available for public inspection at all reasonable times,

(3) Direct the work of the personnel employed by the committee and perform such other duties as the committee may from time to time direct.

(d) Personnel and Facilities of Committee.—The committee shall have the authority to employ clerical, technical, and professional personnel with such qualifications as the committee may prescribe, in accordance with the State personnel regulations and budgetary laws, and shall have the authority to pay such personnel from any appropriations made to the committee, or from any appropriations made to any other agency of the State for the benefit of the committee. In the interest of efficient use of personnel and facilities, technical, laboratory, or other services shall be performed, insofar as practicable, by personnel of presently existing State agencies. The committee shall have authority to compensate such State agencies for services received. The attorney general shall act as attorney for the committee.

(e) Fiscal Affairs of Committee.—For the more efficient conduct of the fiscal affairs of the committee, as well as for the convenience of any State agency, officer or department that may hold or have appropriated to or the custody of funds for

the use and benefit of the committee, all such funds shall be held in a separate or special account on the books and records of such State agency, officer or department with a separate financial designation or code number to be assigned by the budget bureau or its agent, and said funds shall be expended solely upon the proper authorization or order of the committee. (1951, c. 606.)

§ 143-215. Water classification; standards and assignment of classifications.—(a) Duties of Committee under This Section.—The committee is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this article:

(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this article most effectively;

(2) To survey all the waters of the State and to separately identify all such waters as the committee believes ought to be classified separately in order to promote the policy and purposes of this article, omitting only such waters as, in the opinion of the committee, are insufficiently important to justify classification or control under this article; and

(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the committee deems proper in order to promote the policy and purposes of this article most effectively.

(b) Criteria for Classification.—In developing and adopting classifications, and the standards applicable to each, the committee shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to an existing or a contemplated best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards.—In establishing the standards applicable to each classification, the committee shall consider, and the standards when finally adopted and published shall state: The extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications.—In assigning to each identified water the appropriate classification (with its accompanying standards), the committee shall consider, and the decision of the committee when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, vol-

ume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses which have been made, are being made, or may in the future be made, of such water for transportation, domestic consumption, industrial consumption, bathing, fishing and fish culture, fire prevention, the disposal of sewage, industrial wastes and other wastes, or any other uses;

(4) The extent to which such water is already receiving sewage, industrial waste, or other waste as a result of present or past usage of the water, and the relative economic values involved in improving or attempting to improve the condition of such water.

(e) Proposed Adoption and Assignment of Classification.—Prior to the adoption by the committee of the series of classifications and standards applicable thereto as specified in subparagraph (a) (1) of this section, prior to the assignment by the committee of any such classifications to any waters as specified in subparagraph (a) (3) of this section, and prior to any modification of any of such actions previously taken by the committee, the committee shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the following requirements:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the committee proposes to take. The notice shall either include details of such proposed action, or where such proposed action, as in the case of proposed assignments of classifications to identified waters, is too lengthy for publication, as hereafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the office of the committee in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the committee pursuant to the provisions of § 143-215.4.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the committee on or before the first date set for the hearing. The committee is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The committee shall permit anyone who so desires to file a written argument or other statement with the committee in relation to any proposed action of the committee at any time within 30 days following the conclusion of any public hearing or within any such additional time as the committee may allow by notice given as prescribed in this section.

(f) Final Adoption and Assignment of Classifi-

cations.—Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the committee pursuant to this section, the committee shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. When final action has been adopted and is published with respect to the assignment of classifications applicable to the identified waters of any one or more watersheds within the State, the committee shall likewise publish as part of its official regulations, the effective date for the application of the provisions of §§ 143-215.1 and 143-215.2 to persons within such watershed or watersheds. Such effective date shall not be less than 60 days from the date of such publication.

(g) Committee's Power to Modify or Revoke.—The committee is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modification or revocation, however, to be subject to the procedural requirements of this article. (1951, c. 606.)

§ 143-215.1. Control of new sources of pollution.—(a) Required Permits.—After the effective date applicable to any watershed, no person shall:

(1) Make any new outlet into the waters of such watershed;

(2) Construct or operate any new disposal system within such watershed;

(3) Alter or change the construction or the method of operation of any existing disposal system within such watershed;

(4) Increase the quantity (determined by such method of measurement as the committee shall prescribe by its official regulations) of sewage, industrial waste, or other waste discharged through any existing outlet or processed in any existing disposal system to an extent which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water, or to an extent beyond such minimum limits as the committee may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations;

(5) Change the nature of the sewage, industrial waste or other waste discharged through any existing outlet or processed in any existing disposal system in any way which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water: Unless such person shall have applied to the committee for and shall have received from the committee a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit, and in this connection no such permit shall be granted for disposal of wastes into water used for a public water supply where the state board of health determines and advises the committee that such waste disposal is sufficiently close to the source of the public water supply as to have an adverse effect thereon until complete plans and specifications have been submitted to and approved by the State board of health in accordance with the provisions of § 130-110 of the

General Statutes of North Carolina. In any case where the committee denies a permit, it shall state in writing the reasons for such denial and shall also state the committee's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit. If any person has obtained the approval of the State board of health for the construction, alteration, or change of any disposal system prior to the effective date applicable to any watershed in which such disposal system is located, such person shall not be required to obtain a permit from the committee with respect to such construction, alteration or changes, and further provided that any person who has let a contract for the construction of a plant or who has acquired a plant site and the construction of which plant is begun within twelve (12) months from April 6, 1951, shall have the status of a person already established in the discharge of waste, and may proceed with the proposed methods of discharge without the necessity of applying for a permit from this committee.

(b) Committee's Powers as to Permits.—The committee shall act upon all applications for permits so as to effectuate the purpose of this section, by preventing so far as reasonably possible, any pollution or any increase in the pollution of the waters of the State from any additional or enlarged sources. The committee shall have the power:

(1) To grant a permit with such conditions attached as the committee believes necessary to achieve the purposes of this section;

(2) To grant any temporary permit for such period of time as the committee shall specify even though the action allowed by such permit may result in pollution or increased pollution where conditions make such temporary permit essential; and

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no conditions shall be attached to the permit, except when the committee finds such denial or such conditions necessary to effectuate the purposes of this section.

(c) Procedure as to Applications and Permits.—All applications for permits and all permits issued by the committee, or decisions denying any application for a permit, shall be in writing. The committee shall act on all applications for permits as rapidly as possible and consideration of and action on such applications shall be given preference to all other business of the committee. The committee shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the committee to take action on an application for a permit within 90 days shall be treated as approval of such application. The committee shall adopt such forms and rules as it deems necessary, to be published as part of its rules of procedure, with respect to the application for the grant or denial of permits pursuant to this section.

(d) Hearings and Appeals.—Any person whose

application for a permit is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the committee upon making written demand therefor within 30 days following the giving of notice by the committee as to its decision on such application. Unless such a demand for a hearing is made, the decision of the committee on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings in the case shall be as specified in § 143-215.4 and in any applicable rules of procedure of the committee. (1951, c. 606.)

§ 143-215.2. Abatement of existing pollution.—

(a) Required Compliance with Special Orders.—After the effective date applicable to any watershed, no person shall discharge any sewage, industrial waste, or other waste into the waters of such watershed in violation of, or except upon compliance with the terms of, any special order issued by the committee to such person in accordance with the procedure specified by this article.

(b) Committee's Powers as to Special Orders.—The committee is hereby empowered, after the effective date applicable to any watershed, to issue (and from time to time to modify or revoke) a special order to any person whom it finds responsible for causing or contributing to any pollution of water within such watershed. Such an order may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the committee deems necessary and feasible in order to alleviate or eliminate such pollution. No such special order shall be issued against a person, or, if issued, the time for compliance therewith by such person shall be extended to the extent necessary, where the committee concludes, after investigation, or where it is demonstrated after a hearing, that it is impossible or, for the time being, not feasible for such person to correct or eliminate the activities causing or contributing to any pollution. Such a situation shall be deemed to exist where no adequate or practical method of disposal or treatment is known for the particular waste for which such person is responsible, or where the cost of any such known method of disposal or treatment is unduly burdensome in comparison with the pollution abatement results which can be achieved, or where a known method of disposal or treatment cannot be adopted because of financial inability (due to statutory restriction on borrowing power or otherwise), or where there is reason to believe that diligent research and experimentation is being carried on to such an extent as to justify postponement of the adoption of relatively inefficient known methods of disposal or treatment until further opportunity is given for the discovery of more effective methods. The burden of proof as to any of such conditions or any other conditions alleged to exist as a reason for the non-issuance of a special order or for extension of the time of compliance therewith shall be upon the person alleging such conditions.

(c) Procedure as to Special Orders.—No special order shall be issued by the committee (unless issued upon the consent of a person affected thereby) except after a hearing in accordance with the procedural requirements specified in § 143-215.4 and in any applicable rules of procedure of the committee. Any special order shall be based on and shall set forth the findings of fact resulting from the evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(d) Appeals.—Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of § 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the committee shall be final and binding.

(e) Encouragement of Voluntary Action.—The powers conferred by this section are granted for the purpose of enabling the committee to carry out a State-wide program of pollution abatement to the end that ultimately the purposes of this article will be achieved. It is the intent of this section, however, that the committee shall seek to obtain the cooperative effort of all persons contributing to each situation involving pollution in remedying such situation, and that the powers granted by this section shall be exercised only when the objective of this section cannot be otherwise achieved within a reasonable time.

(f) Equality of Enforcement Action.—It is the intent of this article that a comprehensive all inclusive effort be made to accomplish the purposes of this article and to that end it is specifically provided that whenever more than one person is found to be responsible for a condition involving pollution of any segment of any particular water as identified and classified under § 143-215 that the committee shall endeavor to obtain the cooperative effort of all such persons and that if this cannot be accomplished and the committee deems it necessary to take enforcement action to correct such pollution, by invoking the power granted by this article, such action shall be taken against all persons who share responsibility for such condition, to the extent that such persons have not voluntarily undertaken satisfactory remedial measures or have not agreed, by consenting to the issuance of special orders pursuant to this section to undertake such measures: Provided, however, that where because of operation of law or otherwise, enforcement against any municipality or other political subdivisions of the State cannot be had, no special order shall be issued against any other person within the segment of water where abatement of pollution is sought.

(g) Voluntary Projects; Applications for Certificate of Approval; Installation of Treatment Works and Approval Thereof.—After April 6, 1951, any person who is discharging or who proposes to discharge, sewage, industrial waste, or other waste into any waters of the State may submit to the committee proposed plans for the installation of treatment works with respect to such sewage, industrial waste or other waste, and apply to the committee for an-

proval thereof. Such applications shall be in such form as the committee may prescribe in its rules of procedure, shall describe in precise detail the nature and volume of the sewage, industrial waste or other waste which the applicant discharges or proposes to discharge, and shall contain or be supplemented by any information whatsoever which the committee may request. The applicant may submit the opinion of any independent expert as to the probable effectiveness and results of such treatment works and the committee may request that the opinion of experts or additional experts be obtained in any case where it considers the same necessary, the expense in connection therewith to be borne by the applicant. Such an application may be filed by any person irrespective of whether any proceedings involving such person have been taken or are pending under any other provision of this article.

(h) Voluntary Projects, Conditions for Issuance of Certificate.—The committee shall make a thorough investigation of any application filed pursuant to this section before acting thereon, and may require the applicant to submit any statements in support of such application under oath. The committee shall not issue a certificate of approval to any applicant, unless it finds that the proposed treatment works, if installed and operated in accordance with the plans submitted to the committee:

(1) Will provide an effective method of preventing or abating actual or potential pollution of waters into which the applicant is discharging or proposes to discharge any sewage, industrial waste, or other waste; and

(2) Will require such expenditure by the applicant, in relation to the waste treatment problem to be remedied and the size and nature of the applicant's activities resulting in such problem, that it is fair to give the applicant reasonable protection against being required by law, at some later date, to make further capital expenditures in connection with the same waste treatment problem.

(i) Voluntary Projects, Effect of Certificate of Approval.—If the committee approves the proposed treatment works, with any modifications it may recommend, it shall have the power to issue to the applicant a certificate of approval which shall have the following effect and be subject to the following limitations:

(1) Such certificates shall give the person to whom it is issued binding assurance that, for the period specified in the certificate and so long as such person complies with all the terms of the certificate, he will not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for the purpose of alleviating or eliminating any pollution or alleged pollution resulting from the sewage, industrial waste or other waste which such person is discharging into any water.

(2) Such certificate shall be effective from the date of its issuance for such period of time as the committee deems fair and reasonable in the light of all the circumstances.

(3) Such certificate shall provide that it shall

become void unless the applicant completes the proposed treatment works within a time limit specified in such certificate, and unless the proposed treatment works is constructed and at all times operated in accordance with the plans and specifications approved by the committee pursuant to this section.

(4) Such certificate shall be effective only with respect to the nature and volume of sewage, industrial waste or other waste described in the application or in the certificate itself after treatment by the proposed treatment works.

(5) Such certificate shall inure to the benefit of any successors or assigns of the applicant subject to the same conditions as are applicable to the applicant.

(6) Such certificate may impose any other limitations on its effectiveness as the committee may deem necessary or appropriate.

(j) Voluntary Projects, Procedure.—The committee by rules of procedure, not inconsistent with this article, may specify any further rules applicable to the granting of certificates of approval pursuant to this section. Any action by the committee on an application for a certificate of approval is a matter of discretion and consequently there shall be no right to a hearing nor to an appeal with respect to any refusal of the committee to grant any certificate of approval, or to the terms thereof. The committee shall have power to entertain and act on applications for modification of any certificate of approval. The committee shall have no power to revoke or modify a certificate of approval which has been issued, except by agreement, or except where the terms of such certificate have been violated or have not been fulfilled.

(k) Nonvoluntary Projects, Effect of Compliance.—Any person who installs a treatment works for the purpose of alleviating or eliminating pollution in compliance with the terms of, or as a result of conditions specified in, a permit issued pursuant to § 143-215.1 or a special order issued pursuant to § 143-215.2 or a final decision of the committee or a court rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this and any other State law relating to the control of water pollution, for period to be fixed by the committee or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order or decision or the conditions of such permit become finally effective, if:

(1) The treatment works results in the elimination or alleviation of pollution to the extent required by such permit, special order or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order or decision within the time limit, if any, specified thereby, or as the same may be extended, and thereafter remains in compliance. (1951, c. 606.)

§ 143-215.3. General powers of committee.—

(a) Auxiliary Powers.—In addition to the specific powers prescribed elsewhere in this article, and for the purpose of carrying out its duties, the committee shall have the power:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this article and rules of procedure establishing and amplifying the procedures to be followed in the administration of the article: Provided, that no regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by § 143-215.4;

(2) To conduct such investigations as it may deem necessary to carry out its duties as prescribed by this article, and for this purpose to enter upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste and to require written statements or reports under oath with respect to pertinent questions relating to the operation of any sewer system, disposal system or treatment works: Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision.

(3) To conduct public hearings in accordance with the procedures prescribed by this article.

(4) To delegate such of the powers of the committee as the committee deems necessary to one or more of its members or to any qualified employee of the committee; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the committee, and further provided that the committee shall not delegate to persons other than its own members the power to conduct hearings and to make decisions with respect to the classification of waters, the assignment of classifications, or the issuance of any special order for the abatement of existing pollution.

(5) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business, as the committee may deem necessary for enforcement of any of the provisions of this article or of any official actions of the committee, including proceedings to enforce subpoenas or for the punishment of contempt of the committee.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(b) Research Functions.—The committee shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for waste disposal problems. To this end, the committee may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina education institution, with the consent of such institutions. In addition, the committee shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this article. All State departments shall ad-

vised with and cooperate with the committee on matters of mutual interest.

(c) Relation with the Federal Government.—The committee as official agency for the State shall cooperate with and is delegated to act in conjunction with the State Board of Health in local administration of all matters covered by Public Law 845, passed by the congress of the United States in 1948 and future legislation by congress relating to water quality.

(d) Relations with Other States.—The committee may, with the approval of the governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding. (1951, c. 606.)

§ 143-215.4. General provisions as to procedure; seal.—(a) Persons Entitled to Notice, Mailing List.—In any proceeding pursuant to §§ 143-215.1, 143-215.2, 143-215.3, the committee shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to § 143-215, the committee shall give notice as provided by that section, and it shall also give notice of all its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the committee to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the committee, ask to be permanently recorded on such mailing list.

(b) Publication and Codification of Committee's Regulations and Rules.—All official acts of the committee which have or are intended to have general application and effect shall be incorporated either in the committee's official regulations (applying and interpreting this article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the committee be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the secretary of state. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the committee in sufficient numbers to satisfy all reasonable requests therefor. The committee shall codify its regulations and rules and from time to time shall revise and bring up to date such codifications.

(c) Notices.—All notices which are required to be given by the committee or by any party to a proceeding shall be given by registered mail to all persons entitled thereto, including the committee. The date of receipt for such registered mail shall be the date when such notice is deemed to have been given. Notice by the committee may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be

sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The committee by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(d) Hearing.—The following provisions, together with any additional provisions not inconsistent herewith which the committee may prescribe, shall be applicable in connection with hearings pursuant to this article, except where other provisions a.e applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to §§ 143-215.1 and 143-215.2 or 143-215.3 whether called at the instance of the committee or of any person, shall be held upon not less than 30 days' written notice given by the committee to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings by the committee shall be open to the public.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the committee. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the committee.

(4) The committee shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) Subpoenas issued, by the committee, in connection with any hearing shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be as prescribed in connection with subpoenas, issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the committee, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the committee, as the case may be, at whose instance the hearing is being held.

(7) No decision or order of the committee shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(8) Following any hearing, the committee shall afford the parties thereto an opportunity to submit within such time as prescribed by the committee proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the committee's ruling with respect to each such requested finding of fact and conclusion of law.

(9) All orders and decisions of the committee shall set forth separately the committee's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which

any action or decision of the committee is based.

(10) The committee shall have the authority to adopt a seal which shall be the seal of said committee and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the committee or its minutes may be certified by the secretary of the committee under his hand and the seal of the committee and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of same if such records are competent, relevant and material in any such action or proceeding. The committee shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the committee or by any other person or interested party where material, relevant and competent. (1951, c. 606.)

§ 143-215.5. Judicial review.—Any person against whom any final order or decision has been made except where no appeal is allowed as provided by § 143-215.2 (j) shall have a right of appeal to the superior court of the county where the order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the committee shall send a certified transcript of the order or decision and the notice of appeal to the superior court. The trial shall be de novo, with the procedure as in other civil matters, and appellant shall have the right to have a jury trial.

Any person discharging wastes into the waters which are the subject matter of the proceedings, whether such discharge is immediate or remote, shall have the right to intervene in said pending proceeding and shall have the same right as any other party to introduce evidence as to the reasonableness of the order as defined. Failure of such person to intervene in the proceeding shall not operate to deny him his right to a full hearing on any order that might subsequently be issued to him as provided in this section.

Both the person and the committee may introduce evidence bearing upon the reasonableness of the order, and the court and jury shall give due consideration to the practicability, the physical and economic feasibility of disposing of the waste involved, and the economic effect on the community, and shall enter such judgment and orders enforcing such judgment as the public interest and equities of the case may require, and as shall be consistent with the provisions of this article. Such judgment and orders shall fix a period of time, during which the compliance therewith shall constitute a satisfactory method of discharging such wastes. The appellant shall not, during said period of time, and while in compliance with said orders, be required, by the committee or by any court, to change further his method or process of discharging his wastes. In fixing said period of time, due consideration shall be given to the expense involved. Appeals from the judgment and orders of the superior

court will lie to the Supreme Court. No bond shall be required of the committee in appeal to the courts. (1951, c. 606.)

§ 143-215.6. Violations and penalties.—(a) Acts Which Constitute Violations.—After the effective date applicable to any watershed it shall be a violation of this article for any person within such watershed:

(1) To perform any of the acts specified in § 143-215.1 (a) without first obtaining a permit as required by § 143-215.1, or to perform any such acts in disregard of the terms of any such permit.

(2) To fail to comply with the terms of any special order issued by the committee to such person, which has become final, pursuant to § 143-215.2.

No person, however, shall be charged with nor convicted of any violation under the provisions hereof by reason of any act or neglect on the part of such person resulting from any act of God, war, strike, riot or other event over which such person has no control.

(b) Penalties for Violations.—Any person who shall be adjudged to have violated this article shall be guilty of a misdemeanor and shall be liable to a penalty of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each violation. In addition, if any person is adjudged to have committed such violation wilfully, the court may determine that each, week during which such violation continued constitutes a separate violation subject to the foregoing penalty: Provided, however, that where a vote of the people is required to effectuate the intent and purpose of this article by a municipality or other political subdivision of the State and the vote on the referendum is against the means or machinery for carrying the same into effect, then, and only then, this section shall not apply to the elected officials or to any duly authorized appointed officials or employees, of said municipality or political subdivision. (1951, c. 606.)

§ 143-215.7. Effect on laws applicable to public water supplies, privies and septic tanks.—This article shall not be construed as amending, repealing, or in any manner abridging or interfering with § 130-108 through § 130-120, inclusive, of the General Statutes of North Carolina relative to the control of public water supplies, as now administered by the State Board of Health; nor shall the provisions of this article be construed as being applicable to or in any wise affecting the authority of the North Carolina State Board of Health, as contained in Article 12, Chapter 130, dealing with privies and septic tanks or as affecting the powers, duties and authority of city, county, county-city and district health departments usually referred to as local health departments or as affecting the charter powers and ordinances and authority to pass ordinances in regard to sewage disposal of municipal corporations. (1951, c. 606.)

Art. 22. State Ports Authority.

§ 143-216. Creation of authority; membership.—The North Carolina state ports authority is hereby created, consisting of and governed by a board

of nine members, said North Carolina state ports authority being hereinafter for convenience styled the authority. The director of the department of conservation and development shall be ex officio a member of the said board. The governor shall appoint the other members of said board and the membership thereof shall be selected from the state at large, so as to fairly represent each section of the state and all of the business, agricultural and industrial interests of the state. The terms of office of the members of the board appointed on account of residence in Carteret, New Hanover and Brunswick counties shall terminate on the effective date of this section, and the governor shall appoint their successors for the unexpired terms held by them. The terms of office of the other members of the board shall continue until the expiration of their terms for which they were appointed. The one additional member of the board shall be appointed by the governor for a term of six years from and after the first day of May, 1949. Upon the termination of the term of office of each member their successors shall be appointed for a term of six years and until their successors shall have been appointed and qualified. In the event of a vacancy, however caused, the successor shall be appointed by the governor for the unexpired term. The board shall elect one of their number as chairman, one as vice chairman and shall also elect a secretary and a treasurer who may not necessarily be a member of the authority. The board shall meet upon the call of its chairman and a majority of its members shall constitute a quorum for the transaction of its business. The members of the authority shall not be entitled to compensation for their services but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. (1945, c. 1097, s. 1; 1949, c. 892, s. 1.)

Editor's Note.—The 1949 amendment, effective April 11, 1949, rewrote this section.

For act transferring to the state ports authority all property and functions of the Morehead City Port Commission and providing for cancellation of outstanding bonds of said commission, see Session Laws 1951, c. 776.

§ 143-217. Purposes of authority.—Through the authority hereinbefore created, the state of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the state, or within the jurisdiction of the state, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft, terminal railroad and facilities and highways and bridges thereon or essential for the proper operation thereof. Said authority is created as an instrumentality of the state of North Carolina for the accomplishment of the following general purposes:

A. To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places as they may deem feasible for the more expeditious and efficient handling of waterborne commerce from and to any part of the state of North Carolina and other states and foreign countries.

B. To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways

thereat as are within the jurisdiction of the federal government.

C. To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the state of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.

D. To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.

E. To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said authority.

F. To act as agent for the United States of America or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the authority.

G. And in general to do and perform any act or function which may tend to or be useful toward the development and improvement of the said harbors and seaports of the state of North Carolina, and to increase the movement of water-borne commerce, foreign and domestic, through said harbors and seaports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the state of North Carolina. (1945, c. 1097, s. 2.)

§ 143-218. Powers of authority.—In order to enable it to carry out the purposes of this article, the said authority shall:

A. Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient.

Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina state ports authority.

B. Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said authority may deem proper to carry out the purposes and provisions of this article, all or any of them.

C. Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of belt line roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, including terminal railroads.

D. Appoint an executive director for the said ports authority to serve at the pleasure of the board and, with the approval of the governor, to fix his compensation; appoint and employ and dismiss at pleasure, such employees as may be selected by the authority board, and to fix and pay the compensation thereof. The governing board of said ports authority shall annually appoint an executive committee of three members of the board, which executive committee shall be vested with authority to do all acts which might be performed by the whole board, provided the board has not theretofore acted upon such matters. The members of the said executive committee shall serve until their successors are duly appointed.

E. Establish an office for the transaction of its business at such place or places as, in the opinion of the authority, shall be advisable or necessary in carrying out the purposes of this article.

F. Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this article.

G. Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this article.

H. Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the state of North Carolina or any political subdivision thereof for any and all of the purposes authorized in this article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the state of North Carolina, or any political subdivision thereof, and to give such evidences of indebtedness as shall be required by any such federal agency, provided, however, that no indebtedness of any kind incurred or created by the authority shall constitute an indebtedness of the state of North Carolina, or any political subdivisions thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the state of North Carolina, or any political subdivision thereof.

I. Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the authority.

J. Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the authority may deem necessary or expedient in facilitating its business.

K. Be authorized and empowered to do any and all other acts and things in this article authorized or required to be done, whether or not included in the general powers in this section mentioned; and

L. Be authorized and empowered to do any and all things necessary to accomplish the purposes of

this article: Provided, that said authority shall not engage in shipbuilding.

The property of the authority shall not be subject to any taxes or assessments thereon. (1945, c. 1097, s. 3; 1949, c. 892, s. 2.)

Editor's Note.—The 1949 amendment added the second paragraph to subsection A and rewrote subsection D.

§ 143-219. Issuance of bonds.—As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, terminal railroad or any other matter or thing which the authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said authority is hereby authorized at one time or from time to time to issue negotiable revenue bonds of the authority. The principal and interest of such revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(a) A pledge of the net revenues derived from the operation of said properties and facilities, all or any of them, shall be made to secure the payment of said bonds as and when they mature.

(b) Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the state of North Carolina or a pledge of the faith and credit of the state. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(c) Such bonds and the income thereof shall be exempt from all taxation within the state. (1945, c. 1097, s. 4.)

As to State Ports Bond Act of 1949, see Session Laws 1949, c. 820.

§ 143-220. Power of eminent domain.—For the acquiring of rights of way and property necessary for the construction of terminal railroads and structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt line roads and highways and causeways and bridges and other bridges and causeways, the authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the authority, and it may proceed in the manner provided by the general laws of the state of North Carolina for the procedure by any county, municipality or authority organized under the laws of this state, or by the North Carolina state highway department, or by railroad corporations, or in any other manner provided by law, as the authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, state agency or corporations already devoted to public use. (1945, c. 1097, s. 5.)

§ 143-221. Exchange of property; removal of buildings, etc.—The authority may exchange any property or properties acquired under the author-

ity of this chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, railroads, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this article. (1945, c. 1097, s. 6.)

§ 143-222. Dealing with federal agencies.—The authority board is authorized to assign, transfer, lease, convey, grant or donate to the United States of America, or to the appropriate agency or department thereof, any or all of the property of the authority, for the use by such grantee for any purpose included within the general purposes of this article, as stated in § 143-217, such assignment, transfer, lease, conveyance, grant or donation to be upon such terms as the authority board may deem advisable. In the event the United States of America should decide to undertake the acquisition, construction, equipment, maintenance or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities before referred to, including terminal railroads, roads, highways, causeways, or bridges and should itself decide to acquire the lands and properties necessarily needed in connection therewith by condemnation or otherwise, the authority board is further authorized to transfer and pay over to the United States of America or to the appropriate agency or department thereof, such of the moneys belonging to the authority board as may be found needed or reasonably required by said United States of America to meet and pay the amount of judgments or condemnation, including costs, if any be taxed thereon, as may from time to time be rendered against the United States of America, or its appropriate agency, or as may be reasonably necessary to permit and allow said United States of America, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of said facilities before referred to. (1945, c. 1097, s. 7.)

§ 143-223. Terminal railroads.—The authority shall have the power and authority to acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports a line of terminal railroads with necessary sidings, turn outs, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith or appurtenant thereto shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, and merchandise over, along or upon the track of such railroad or other conveyances. And the authority shall have the right and authority to make agreements as to scale of wages, seniority, and working conditions with locomotive engineers, locomotive firemen, switchmen and switch engine foremen and hostlers engaged in the operation of the terminal railroads provided for in this section, and the ser-

vice and equipment pertinent thereto. And should the said department exercise the authority herein given, then in such event it shall be the duty of the said department to make such agreements with said employees hereinabove specified, in accordance with the act of congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) as amended or as hereafter amended to the end that the same agreements as to seniority and working conditions will obtain as to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby. The authority shall have the right and authority with its terminal railroads to connect with or cross any other railroad upon payment of just compensation and to receive, deliver to and transport the freight, passengers, and cars of common carrier railroads as though it were an ordinary common carrier. (1945, c. 1097, s. 8.)

§ 143-224. **Jurisdiction of the authority.**—The jurisdiction of the authority in any of said harbors or seaports within the state shall extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports. (1945, c. 1097, s. 9.)

§ 143-225. **Treasurer of the authority.**—The authority shall select one of its members to serve as its treasurer. The authority shall require a surety bond of such appointee in such amount as the authority may fix, and the premium or premiums thereon shall be paid by said authority as a necessary expense of said authority. (1945, c. 1097, s. 10.)

§ 143-226. **Deposit and disbursement of funds.**—All authority funds shall be deposited in a bank or banks to be designated by the authority. Funds of the authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the authority and countersigned by the chairman, the acting chairman or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the authority except for a purpose authorized by this article and only when the account or expenditure for which the same is to be given in payment has been audited and approved by the authority or its executive director. Any and all revenues and earnings received by the authority from its operations shall be handled as directed in section 13, Chapter 820 of the Session Laws of 1949. (1945, c. 1097, s. 11; 1951, c. 1088, s. 1.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 143-227. **Annual audit; copies to be furnished.**—At least once in each year the State Auditor shall cause to be made a detailed audit of all monies received and disbursed by the authority during the preceding year. Such audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show the complete financial condition of the authority. A copy of the said audit shall be furnished to each member of the governing body

of the said authority and to the officers thereof and to the governor, the budget bureau and the attorney general. (1945, c. 1097, s. 12; 1951, c. 1088, s. 2.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 143-228. **Liberal construction of article.**—It is intended that the provisions of this article shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen. (1945, c. 1097, s. 13.)

Art. 23. Armory Commission.

§ 143-229. **Definitions.**—The terms used in this article mean:

(a) **Commission:** The armory commission created by this article.

(b) **Unit:** Any national guard unit active or inactive or state guard unit or other organized military unit of which the governor is commander-in-chief.

(c) **Funds:** Any funds appropriated by any municipality, county or the United States of America and made available for the purpose of acquiring armory sites or constructing or repairing any armory, warehouse, or other facility for the use of any unit or for any other purpose in connection with the housing, training, instruction or promotion of interest of any unit. It shall also include funds which may be donated for the benefit, directly or indirectly, of any unit.

(d) **Armory:** Any building and/or land suitable for armory purposes with area adjacent thereto, and any building and/or land suitable for warehousing, motor parking, instruction, training, or any other use necessary for any unit.

(e) **Armory Site:** Any land suitable for the construction of an armory as defined in (d) above, with the adjacent area thereto necessary for motor parking, instruction and training of any unit.

(f) **Facilities:** Furniture, equipment, warehouses, motor sheds, target ranges and any other adjunct necessary to administration, instruction and training of any unit.

(g) **Municipality:** Any incorporated city or town and any unincorporated city or town. (1947, c. 1010, s. 1.)

§ 143-230. **Composition of commission.**—The governor of the state of North Carolina, the attorney general of North Carolina, the adjutant general of North Carolina, together with two federally recognized officers on the active list of the North Carolina national guard to be appointed by the governor and to serve at the pleasure of the governor, shall constitute the North Carolina armory commission. The governor shall be its chairman and the adjutant general shall be its secretary. (1947, c. 1010, s. 2.)

§ 143-231. **Location of principal office; service without pay; travel expenses; meetings and quorum.**—The commission above named shall have its principal office in Raleigh. The members shall serve without compensation and shall be allowed their reasonable expense incurred in attending meetings of the commission or while traveling un-

der orders for the performance of duty in connection with the business of the commission. Such expense shall be payable out of any funds available to the commission or, if the governor so directs, out of the appropriation for the adjutant general's department. The commission shall hold regular or special meetings at Raleigh or other designated places at the direction and on call of the governor, after reasonable notice. A majority of the members shall constitute a quorum for the consideration of business. (1947, c. 1010, s. 3.)

§ 143-232. Authority to foster development of armories and facilities.—The commission is authorized and empowered to foster the development in North Carolina of adequate armories and other necessary facilities for the proper housing, instruction, training and administration of all units and facilities necessary for the proper protection, care, maintenance, repair, issue and up-keep of public and military property issued to or for the use of any unit. (1947, c. 1010, s. 4.)

§ 143-233. Powers of commission specified.—The commission is further authorized and empowered:

(a) To act as an agency of the state of North Carolina for the purpose of setting up and administering any state-wide plan for the acquisition of armories and armory sites, for the construction and maintenance of armories and for providing facilities which are now or may be necessary in order to comply with any federal law and in order to receive, administer and disburse any funds which may be provided by act of congress for such purpose.

(b) As such agency of the state of North Carolina, to promulgate state-wide plans for the acquisition of armories and armory sites, for the construction and maintenance of armories and such other facilities as may be found desirable or necessary to meet the requirements and receive the benefits of any federal legislation with respect thereto.

(c) To receive and administer any funds which may be appropriated by any act of congress or otherwise for the acquisition of armories and armory sites, for the construction and maintenance of armories and for providing facilities, which may at any time become available for such purposes.

(d) To receive and administer any other funds which may be available in furtherance of any activity in which the commission is authorized and empowered to engage under the provisions of this article.

(e) To adopt such rules and regulations as may be necessary to carry out the intent and purpose of this article. (1947, c. 1010, s. 5.)

§ 143-234. Power to acquire land, make contracts, etc.—In furtherance of the duties, powers and authority given herein, the commission is authorized and empowered to accept and hold title to real property in the name of the state of North Carolina, and to engage in contracts and do any and all things necessary to carry out any state-wide program for the acquisition of armories and armory sites, for the construction and maintenance of armories and to provide facilities which may be considered by it as necessary for any unit and which may be authorized by act of congress or otherwise. (1947, c. 1010, s. 6.)

§ 143-235. Counties and municipalities may lease, convey or acquire property for use as armory.—Every municipality and county of the state of North Carolina is hereby authorized and empowered to lease or convey by deed to the state of North Carolina: (1) any existing armory and the land adjacent thereto; (2) any real property suitable for the construction of an armory, warehouse or other facility; and (3) any real property suitable for use in the administration, instruction and training of any unit. Every municipality and county is further authorized and empowered to acquire any real property which may be suitable for use as an armory or for the construction of an armory thereon, or for any other purpose of a unit. Contracting of an indebtedness and expenditure of public funds by any municipality or county to comply with the provisions of this article are hereby declared to be a necessary expense and for a public purpose. (1947, c. 1010, s. 7; 1949, c. 1066, s. 1.)

Editor's Note.—The 1949 amendment struck out the words "hereafter acquired" formerly appearing after the word "any" in line five.

§ 143-235.1. Prior conveyances validated.—All conveyances of real property heretofore made by any municipality or county of the state of North Carolina to the state of North Carolina for armory purposes are hereby validated and ratified in every respect. (1949, c. 1066, s. 2.)

Section 4 of the act from which this section was codified made it effective from and after its ratification, which took place on April 20, 1949.

§ 143-236. County and municipal appropriations for benefit of military units.—Every municipality and county is hereby authorized and empowered to appropriate for the benefit of any unit or units such amounts of public funds from year to year as the governing body of such municipality or county may deem wise, patriotic and expedient; and is further authorized, either alone or in connection with others, to provide heat, light, water, telephone service and/or other costs of operation and maintenance of any armory. (1947, c. 1010, s. 8.)

Art. 24. Wildlife Resources Commission.

§ 143-237. Title.—This article shall be known and may be cited as the North Carolina Wildlife Resources Law. (1947, c. 263, s. 1.)

§ 143-238. Definitions.—As used in this article unless the context clearly requires otherwise:

(1) The word "commission" shall mean the North Carolina wildlife resources commission.

(2) The word "director" shall mean the executive director of the North Carolina wildlife resources commission.

(3) The terms "wildlife resources" and "wildlife" shall mean and include game birds and other game animals, game and fresh-water fishes, fur bearing animals, song and insect-eating birds, non-game mammals and birds, and all other naturally wild aquatic and terrestrial animals, except those species of fish and other wild aquatic animals which shall come under the classification of commercial fisheries. (1947, c. 263, s. 2.)

§ 143-239. Statement of purpose.—The purpose of this article is to create a separate State agency to be known as the North Carolina wildlife resources commission, the function, purpose, and duty of which shall be to manage, restore, develop,

cultivate, conserve, protect, and regulate the wildlife resources of the state of North Carolina, and to administer the laws relating to game, game and fresh-water fishes, and other wildlife exclusive of commercial fisheries, enacted by the general assembly to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical game, game fish, and wildlife program directed by qualified, competent, and representative citizens, who shall have knowledge of or training in the protection, restoration, proper use and management of wildlife resources. (1947, c. 263, s. 3.)

§ 143-240. Creation of wildlife resources commission; districts; qualifications of members.—There is hereby created a commission to be known as the North Carolina wildlife resources commission. The commission shall consist of nine citizens of North Carolina, who shall be competent and qualified as herein provided, and who shall be appointed by the governor. One and only one of the commission members shall be appointed from each of the following geographical districts:

First district to be composed of the following counties:

Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties:

Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties:

Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties:

Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, New Hanover, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties:

Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties:

Anson, Cabarrus, Davidson, Mecklenburg, Moore, Montgomery, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties:

Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties:

Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties:

Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania.

Each member of the commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife con-

servation and restoration problems. (1947, c. 263, s. 4.)

§ 143-241. Appointment of commission members.—After passage of this article and on or before the first day of July, 1947, the governor shall appoint the members of the commission as follows:

Three members whose terms shall expire on the fourth Tuesday of January, 1949; three members whose terms shall expire on the fourth Tuesday of January, 1951; three members whose terms shall expire on the fourth Tuesday of January, 1953; as the said terms expire, and thereafter, all regular appointments to the commission shall be for terms of 6 years each, provided that any member of the commission appointed pursuant to this section may be removed by the governor for cause. (1947, c. 263, s. 5.)

§ 143-242. Vacancies by death, resignation, removal, or otherwise.—Vacancies in the commission resulting from death, resignation, removal, or from any other cause, shall be filled by appointment by the governor of a competent person for the unexpired term. (1947, c. 263, s. 6.)

§ 143-243. Organization of the commission; election of officers.—The commission shall hold at least two meetings annually in the city of Raleigh, one in January and one in July, and five members of the commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such other times and places within the state as may be deemed necessary for the efficient transaction of the business of the commission. The commission may hold additional or special meetings at any time at the call of the chairman or on call of any three members of the commission. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this article, and shall have an official seal, which shall be judicially noticed. At the first meeting of the commission, which shall be held in the city of Raleigh on or before the first day of July, 1947, it shall elect one of its members as chairman and one of its members as vice chairman; thereafter, at the meeting held in January, 1948, and annually thereafter, the commission shall elect one of its members as chairman and one of its members as vice chairman; such officers to hold office for a period of one year. (1947, c. 263, s. 7.)

§ 143-244. Location of offices.—The board of public buildings and grounds shall provide the commission with offices in the city of Raleigh, North Carolina. (1947, c. 263, s. 8.)

§ 143-245. Compensation of commissioners.—The members of the commission shall receive not more than ten dollars (\$10.00) per diem and actual travel expenses while in attendance of meetings of the commission or engaged in the business of the commission; all travel expenses shall be paid in accordance with the provisions of the Executive Budget Act, article 1, chapter 143 of the General Statutes of North Carolina. (1947, c. 263, s. 9.)

§ 143-246. Executive director; appointment, qualifications, duties, oath of office, and bond.—The North Carolina wildlife resources commission as soon as practicable after its organization shall select and appoint a competent person quali-

fied as hereinafter set forth as executive director of the North Carolina wildlife resources commission. The executive director shall be charged with the supervision of all activities under the jurisdiction of the commission and shall serve as the chief administrative officer of the said commission. Subject to the approval of the commission and the director of the budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as executive director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such director shall be fixed by the governor with the approval of the commission, and said director shall be allowed actual expenses incurred while on official duties away from resident headquarters; said salary and expenses to be paid from the wildlife resources fund subject to the provisions of the Executive Budget Act. The term of office of the executive director shall be at the pleasure of the commission. Before entering upon the duties of his office, the executive director shall take the oath of office as prescribed for public officials and shall execute and deposit with the state treasurer a bond in the sum of ten thousand dollars (\$10,000.00), to be approved by the state treasurer, said bond to be conditioned upon the faithful performance of his duties of office. The said executive director shall be clothed and vested with all powers, duties, and responsibilities heretofore exercised by the commissioner of game and inland fisheries relating to wildlife resources. (1947, c. 263, s. 10.)

§ 143-247. Transfer of powers, duties, jurisdiction, and responsibilities.—All duties, powers, jurisdiction, and responsibilities now vested by statute in and heretofore exercised by the department of conservation and development, the board of conservation and development, the director of conservation and development, the division of game and inland fisheries, the commissioner of game and inland fisheries, or any predecessor organization, board, commission, commissioner or official relating to or pertaining to the wildlife resources of North Carolina, exclusive of commercial fish and fisheries, are hereby transferred to and vested by law in the North Carolina wildlife resources commission hereby created, subject to the provisions of this article. The powers, duties, jurisdiction, and responsibilities hereby transferred shall be vested in the commission immediately upon its organization under the provisions of this article. Provided however, that no provision of this article shall be construed as transferring to or conferring upon the North Carolina wildlife resources commission, herein created, jurisdiction over the administration of any laws regulating the pollution of streams or public waters in North Carolina. (1947, c. 263, s. 11.)

§ 143-248. Transfer of lands, buildings, records, equipment, and other properties.—There is hereby transferred to the North Carolina wildlife resources commission all lands, buildings, structures, records, reports, equipment, vehicles, supplies, materials, and other properties, and the possession and use thereof, which have heretofore been acquired or obtained and now remain in the possession of, or which are now and here-

tofore have been used or intended for use by the department of conservation and development, the director of conservation and development, the division of game and inland fisheries, and the commission of game and inland fisheries, and any predecessor organization or division or official of either, for the purpose of protecting, propagating, and developing game, fur bearing animals, game fish, inland fisheries, and all other wildlife resources, exclusive of commercial fish or fisheries, which heretofore have been used or held by them in connection with any program conducted for said purposes, whether said lands or properties were acquired, purchased, or obtained by deed, gift, grant, contract, or otherwise; the said lands and other properties hereby transferred, subject to the limitations hereinafter set forth to the said wildlife resources commission shall be held and used by it subject to the provisions of this article and other provisions of law in furtherance of the intents, purposes, and provisions of this article and other provisions of law in such manner and for such purposes as may be determined by the commission. In the event that there shall arise any conflict in the transfer of any properties or functions as herein provided, the governor of the state is hereby authorized and empowered to issue such executive order, or orders, as may be necessary clarifying and making certain the issue, or issues, thus arising. Provided, further, nothing herein contained shall be construed to transfer any of the state parks or state forests to the North Carolina wildlife resources commission. Provided, further, title to the property transferred by virtue of the provisions of this article shall be held by the state of North Carolina for the use and benefit of the North Carolina wildlife resources commission and the use, control and sale of any of such property shall be governed by the general law of the state affecting such matters. (1947, c. 263, s. 12.)

§ 143-249. Transfer of personnel.—Upon the effective date of this article the division of game and inland fisheries of the North Carolina department of conservation and development shall cease to exist and all employees of said division shall continue as employees of the commission at their option or until further action by the commission. (1947, c. 263, s. 13.)

§ 143-250. Wildlife resources fund.—All monies in the game and fish fund or any similar state fund when this article becomes effective shall be credited forthwith to a special fund in the office of the state treasurer, and the state treasurer shall deposit all such monies in said special fund, which shall be known as the wildlife resources fund.

All unexpended appropriations made to the department of conservation and development, the board of conservation and development, the division of game and inland fisheries or to any other state agency for any purpose pertaining to wildlife and wildlife resources, exclusive of commercial fish and fisheries, shall also be transferred to the wildlife resources fund.

On and after the effective date of this article all monies derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, and all funds there-

after received from whatever sources shall be deposited to the credit of the wildlife resources fund and made available to the commission until expended subject to the provisions of this article. The wildlife resources fund herein created shall be subject to the provisions of the Executive Budget Act, chapter 143, article 1 of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, chapter 143, article 2 of the General Statutes of North Carolina as amended.

All monies credited to the wildlife resources fund shall be made available to carry out the intent and purposes of this article in accordance with plans approved by the North Carolina wildlife resources commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this article.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina wildlife resources commission the governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned. (1947, c. 263, s. 14.)

§ 143-251. Cooperative agreements.—In furtherance of the purposes of this article the commission is hereby authorized and empowered to enter into cooperative agreements pertaining to the management and development of the wildlife resources with federal, state, and other agencies, or governmental subdivisions. (1947, c. 263, s. 15.)

§ 143-252. Article not applicable to commercial fish or fisheries.—None of the provisions of this article shall be construed to apply to commercial fish or fisheries, or to repeal or modify any existing laws or regulations governing commercial fish or fisheries. (1947, c. 263, s. 16.)

§ 143-253. Jurisdictional questions.—In the event of any question arising between the department of conservation and development and North Carolina wildlife resources commission as to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules or regulations or administrative practices adopted by said bodies, such questions or matters shall be determined by the governor of the state and his determination shall be binding on each of said bodies. (1947, c. 263, s. 17.)

§ 143-254. Conflicting laws; regulations of department continued.—All laws and clauses of laws in conflict with the provisions of this article are hereby modified and amended so as to conform with the provisions of this article; and all laws and clauses of laws pertaining to the wildlife resources, as herein defined, not in conflict with the provisions thereof are to remain and continue in full force and effect.

Provided further, that all rules and regulations now in force with respect to wildlife resources as herein defined, promulgated by the department of conservation and development under chapter 113 of the General Statutes of North Carolina, shall continue in full force and effect until altered, modified, amended, or rescinded by the commission created under this article, or repealed or modified by law. (1947, c. 263, s. 18.)

§ 143-254.1. Assent to act of congress providing aid in fish restoration and management projects.—Assent is hereby given to the provisions of the act of congress entitled "An act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and the wildlife resources commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of co-operative fish restoration projects, as defined in said act of congress, in compliance with said act and rules and regulations promulgated by the secretary of the interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by fishermen shall be diverted for any other purpose than the administration of the wildlife resources commission and for the protection, propagation, preservation, and investigation of fish and game.

Nothing in this section shall be construed to prohibit the exercise of any of the powers granted to the wildlife resources commission under the provisions of this article. (1951, cc. 316, 405.)

Art. 25. National Park, Parkway and Forests Development Commission.

§ 143-255. Commission created; members appointed.—There is hereby created a commission to be known as the North Carolina national park, parkway and forests development commission, which commission, in addition to the duties hereafter specified, shall succeed to the general functions heretofore exercised by those commissions and agencies referred to in former sections 113-78 to 113-81 and in repealed chapter 48 of the Public Laws of 1927. The commission hereby created shall consist of seven members, one member of which shall be a resident of Buncombe county, one member a resident of Haywood county, one member a resident of Jackson county, one member a resident of Swain county, three members residents of counties adjacent to or affected by the development or completion of the Blue Ridge Parkway, the Great Smoky Mountains National Park or the Pisgah or Nantahala National Forests. The chairman of the state highway and public works commission and the director of the department of conservation and development, shall be ex-officio members of the commission. There shall be transferred to the commission herein created all records, documents, accounts, funds, appropriations and all other properties and interests whatsoever heretofore owned or held by any commission or agency under the provisions of article 6 of chapter 113 of the General Statutes of North Carolina, as amended, or chapter 48 of the Public Laws of 1927, as amended, and the commission herein created is hereby authorized to receive, hold, use, convey and expend the same, subject to the approval of the director of the budget, and in furtherance of the purposes of this article. (1947, c. 422, s. 3.)

§ 143-256. Appointment of commissioners; term of office.—On or before July 1st, 1947, the governor of North Carolina shall appoint seven members of the original commission, two to serve for two years, two to serve for four years, and three to serve for six years, and as the terms of these

commissioners expire, the governor shall thereafter appoint members of the commission to serve for terms of six years. Members of the commission shall be eligible for reappointment. The governor shall also accept the resignation of members of the commission and shall appoint members to serve the unexpired terms caused by the resignation or death of any of the members of the commission. (1947, c. 422, s. 4.)

§ 143-257. Meetings; election of officers.—The commission shall at its first meeting elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the commission, but the secretary need not be a member of the commission. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be re-elected. In case of vacancies by resignation or death, the office shall be filled by the commission for the unexpired term of said officer. The commission shall meet monthly at the time and place designated by its chairman, or upon order duly made by the commission it shall meet only upon call of its chairman. The commission shall adopt such other rules, regulations and by-laws governing the operation of the commission as it shall deem necessary. Five members of the commission shall constitute a quorum for the transaction of business. (1947, c. 422, s. 5.)

§ 143-258. Duties of the commission.—The commission shall endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah National Forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway, or the Pisgah or Nantahala National Forests. It shall be the duty of the commission to study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section. It shall confer with the various departments, agencies, commissions and officials of the federal government and governments of adjoining states in connection with the development of the federal areas and projects named in this section. It shall also advise and confer with the various officials, agencies or departments of the state of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas, but shall not in any manner take over or supplant these agencies in their work in this area, except in so far as expressly provided in this article in respect to those commissions and agencies provided for in article 6 of chapter 113 of the General Statutes of North Carolina, as amended, or chapter 48 of the Public Laws of 1927, as amended. It shall also advise and confer with the various interested individuals, organizations or agencies that are interested in

developing this area and shall use its facilities and efforts in formulating, developing and carrying out over-all programs for the development of the area as a whole. It shall study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections, and its findings in this connection shall be filed as recommendations with the national park service of the federal government, and the North Carolina state highway and public works commission. (1947, c. 422, s. 6.)

§ 143-259. The commission to make reports.—The commission shall make a biennial report to the governor covering its work up to January 1st preceding each session of the general assembly. It shall also file any such suggestions or recommendations as it deems proper with the department of conservation and development and the state highway and public works commission in respect to such matters as might be of interest to, or affect such department or commission. (1947, c. 422, s. 7.)

§ 143-260. Compensation of commissioners.—The members of the commission shall receive their necessary traveling expenses incurred while attending meetings of the commission and also such additional traveling expenses in connection with the business of the commission as shall be approved by the director of the budget. (1947, c. 422, s. 8.)

Art. 26. State Education Commission.

§ 143-261. Appointment and membership; duties.—The governor of North Carolina is hereby authorized to appoint a commission to be known as the state education commission, consisting of eighteen members, six of whom shall be selected from educational groups within the state, and twelve of whom shall be selected from the agricultural, business, industrial, and professional life of the state. It shall be the duty of this commission to study all educational problems to the end that a sound overall educational program may be developed in North Carolina, and to report their findings and make recommendations to the governor and the general assembly of 1949. (1947, c. 724, s. 1.)

§ 143-262. Organization meeting; election of officers; status of members.—After their appointment, the commission shall meet in the office of the governor of North Carolina not later than the 15th of May, 1947, and upon the recommendation of the governor, elect a chairman and a full time executive secretary. The secretary may or may not be a member of the commission. Membership on the commission herein authorized shall not constitute public office but shall be considered as a commissioner for a special purpose; and the governor may appoint as ex-officio member, or members, on said commission any public official without violating the provisions of article XIV, § 7, of the state constitution. (1947, c. 724, s. 2.)

§ 143-263. Comprehensive study of education problems.—This commission shall make a comprehensive study of organization, administration, finance, teacher education, supervision, curriculum, standardization, consolidation, transportation, buildings, personnel, a merit rating system for teachers,

vocational education, and any other problems related to the overall educational program of the state. (1947, c. 724, s. 3.)

Cross Reference.—As to authority of state board of education to continue study, see note under § 115-19.

§ 143-264. Per diem and travel allowances.—Each member of the commission shall be entitled to per diem and travel the same as is paid to the state board of education, when attending any meeting of the commission or while engaged in the performance of any duties of the commission. (1947, c. 724, s. 4.)

§ 143-265. Salary of executive secretary.—The commission is authorized to set the salary of a full time executive secretary, with the approval of the director of the budget. (1947, c. 724, s. 5.)

§ 143-266. Powers of executive secretary.—The executive secretary of the commission shall have the authority and power to subpoena witnesses and compel their attendance to testify and/or produce records at any hearing before the commission, or any committee thereof, under the same provisions of the law as now applies to attendance of witnesses before legislative committees. (1947, c. 724, s. 6.)

Art. 27. Settlement of Affairs of Certain Inoperative Boards and Agencies.

§ 143-267. Release and payment of funds to state treasurer; delivery of other assets to director of the division of purchase and contract.—Whenever the statutes creating, or granting authority to, any licensing, regulatory, or examining board or agency have been or are hereafter repealed, or declared unconstitutional or invalid by the supreme court of North Carolina, every officer or other person responsible for or having control or custody of any funds, records, equipment or any other assets held or owned by any such board or agency which was theretofore authorized by any such statute to exercise licensing or regulatory powers or conduct examinations in respect to the right to practice any profession or engage in any trade, business, craft or calling, shall forthwith release and deliver all such funds to the state treasurer of North Carolina, and shall forthwith release and deliver all other assets of every nature whatsoever to the director of the division of purchase and contract for the state of North Carolina. (1949, c. 740, s. 1.)

§ 143-268. Official records turned over to department of archives and history; conversion of other assets into cash; allocation of assets to state agency or department.—The director of the division of purchase and contract shall receive all such assets so delivered and, after they have served their purpose in the liquidation of the affairs of such board or agency, shall turn over all official records of such board or agency to the department of archives and history, to be held pursuant to the statutes relating to such department. The director of the division of purchase and contract shall proceed to convert all other such assets into cash by public sale to the highest bidder, and shall deposit the net proceeds of any such sale with the state treasurer: Provided, that the director of the division of purchase and contract, in his discretion, may allocate to any state agency or department, the whole or any

part of such assets, the sale of which is not required to discharge the obligations of the board or agency being liquidated. (1949, c. 740, s. 2.)

§ 143-269. Deposit of funds by state treasurer.—The state treasurer shall receive all funds delivered to him under this article and shall deposit the same in a special fund for the account of the board or agency whose affairs are being liquidated, to be held and applied as hereinafter provided. (1949, c. 740, s. 3.)

§ 143-270. Statement of claims against board or agency; time limitation on presentation.—Any person having any claim or cause of action against any board or agency whose affairs are being liquidated under this article, may present a verified statement of the same to the director of the division of purchase and contract, who shall investigate and approve or disapprove such claim; any claim not presented to the director of the division of purchase and contract within one year from the time such board or agency becomes inoperative by law shall be barred, and no claim shall be approved or paid which is barred by any statute of limitation or any statutory prohibition in respect to the payment of any claim, or the refund of any deposit, dues, assessment, or examination or license fee. (1949, c. 740, s. 4.)

§ 143-271. Claims certified to state treasurer; payment; escheat of balance to University of North Carolina.—The director of the division of purchase and contract shall certify to the state treasurer a schedule of all claims approved or disapproved, and after one year from the time at which the board or agency became inoperative under the law, the state treasurer shall, out of the funds in his hands for the account of such board or agency, pay all approved claims in full, or if such funds are insufficient for full payment, then he shall equally prorate said claims and make partial payment in so far as funds are available. Should any balance remain in the hands of the treasurer after the payment of all approved claims, such balance shall escheat and be paid over to the University of North Carolina, to be held in accordance with the statutes governing escheats. (1949, c. 740, s. 5.)

§ 143-272. Audit of affairs of board or agency; payment for audit and other expenses.—Irrespective of the provisions of § 143-271 of this article, the state treasurer is specifically authorized, in his discretion, to cause audit to be made of the affairs of any such board or agency, and to immediately pay the cost of such audit, together with the expenses of transferring records and assets, and other necessary costs of liquidation, out of the first funds coming into his hands for the account of such board or agency. (1949, c. 740, s. 6.)

Art. 28. Communication Study Commission.

§ 143-273. Creation of commission.—There is hereby created an agency to be known as the North Carolina communication study commission, which shall function for four years pursuant to the provisions of this article. (1949, c. 1077, s. 1.)

Editor's Note.—As to appropriation for purposes of article, see Session Laws 1949, c. 1077, s. 7.

§ 143-274. Definitions.—As used in this article.

(1) "Communication" is defined as those methods, namely radio, motion pictures, still photography, slides, film strips, models, maps, charts, illustrated publications, facsimile and television, by means of which activities and materials of an educational nature are disseminated to the people of North Carolina at pre-school, primary, secondary, college, and adult levels.

(2) "Commission" means the North Carolina communication study commission.

(3) "Committee" means the advisory communication committee of the North Carolina communication study commission. (1949, c. 1077, s. 2.)

§ 143-275. Membership of commission; term.—

(1) The commission shall consist of the governor, superintendent of public instruction, and director of the department of conservation and development, as members *ex officio*, together with seven members appointed by the governor.

(2) In making appointment to the commission, the governor shall choose three persons who understand the entire educational program of the state, two persons from the field of radio and two persons who shall represent business in the state. The commission shall elect with the approval of the governor one member to act as chairman. A majority of the commission shall constitute a quorum.

(3) The seven members appointed by the governor shall serve for a term of four years, from July 1, 1949, through June 30, 1953.

(4) Any appointed member of the commission may be removed by the governor.

(5) Vacancies in the commission shall be filled by the governor for the unexpired term.

(6) The commission shall meet quarterly, in January, April, July, and October, on a date to be fixed by the chairman. The commission may be convened at such other times as the governor or chairman may deem necessary.

(7) Members of the commission shall be paid seven dollars (\$7.00) per day for each day required in attendance on meetings of the commission and going to and returning from meetings and the same subsistence and travel allowance for attendance at meetings as is provided for state employees. (1949, c. 1077, s. 3.)

§ 143-276. Duties of commission.—It shall be the duty of the commission:

(1) To survey, study and appraise the need in North Carolina for an over-all plan in the use of all methods of educational communication at all levels of education in North Carolina.

(2) To survey, study and appraise the potential uses of these educational communication methods in North Carolina's program of conservation and development of natural, industrial and human resources.

(3) To survey, study and appraise the potentialities which might lead to more effective cooperation among the communication industries and between the communication industries and the educational institutions.

(4) To survey, study and appraise the need and procedure for setting up facilities to train communication specialists and to train teachers

in the use of communication equipment and materials in the classroom.

(5) To survey, study and appraise the educational use of radio, television, motion pictures and any other methods of educational communication which may come to the attention of the commission.

(6) To guide the growth and development of educational communication in North Carolina as it relates to the education, health, economy and general welfare of the people of North Carolina.

(7) To cooperate in the promotion of local, regional and state-wide use of all methods of educational communication as they relate to the education, health, economy and general welfare of the people of North Carolina.

(8) To establish and promote educational communication standards.

(9) To cooperate with state and federal communication agencies, the communication advisory committee, and with commercial communication interests in the promotion of educational opportunities through the methods of educational communication.

(10) To recommend biennially on the basis of its surveys, studies and appraisals specific actions to the general assembly.

(11) To submit a biennial report of its activities to the governor and the general assembly. (1949, c. 1077, s. 4.)

§ 143-277. Powers of commission.—The commission is hereby authorized:

(1) To make rules and regulations for the proper administration of its duties.

(2) To accept any grant of funds made by the United States or any agency thereof for the purpose of carrying out its functions.

(3) To accept gifts, bequests, devises and endowments. The funds, if given as an endowment, shall be invested in such securities as designated by the donor, or, if there is no designation, in those in which the state sinking fund may be invested. All such gifts, bequests, devises, and all proceeds from such invested endowments shall be used for carrying out the purpose for which they are made.

(4) To administer all funds available to the commission.

(5) To act jointly when advisable with any other state agency, institution, department or commission in order to carry out the commission's objectives and responsibilities. No activity of the commission, however, shall be allowed to interfere with the work of any other state agency, provided, however, that the work of the commission shall, to the extent possible, be coordinated with the work and objectives of the department of education.

(6) To employ, with the approval of the governor, an executive director, and upon the recommendation of the executive director, such other persons and/or companies as may be needed to carry out the provisions of this article. The executive director shall act as secretary to the commission.

(7) To do any and all other things reasonably necessary to carry out the purposes of this article. (1949, c. 1077, s. 5.)

§ 143-278. Advisory committee.—The governor

shall name a communication advisory committee consisting of thirty members who shall serve for a term of two years, from July 1, 1949, to July 1, 1951, and their successors shall be appointed for a term of two years beginning July 1, 1951, and ending June 30, 1953. The governor shall name one member to act as a chairman of the committee. Vacancies occurring on the committee shall be filled by the governor for the unexpired term. Members of the committee shall be representative in so far as possible of North Carolina education in general, the communication industries of North Carolina, and all other groups who might derive benefit from or be beneficial to education in North Carolina.

The committee shall meet at least once each year with the commission at times and places to be fixed by the governor. Members of the committee shall serve without compensation, but shall be paid the same subsistence and travel allowance for attendance at meetings as is provided for state employees.

The committee shall act in an advisory capacity to the commission. It shall help the commission in every way possible by means of suggestion, discussions, and knowledge of educational needs throughout the state in the advancement of educational opportunities through the methods of communication. (1949, c. 1077, s. 6.)

Art. 29. Commission to Study the Care of the Aged and Handicapped.

§ 143-279. **Establishment and designation of commission.**—A commission is hereby established for the study of the problems relating to the care of the aged with especial reference to those failing mentally and the intellectually or physically handicapped of all ages and this commission shall be known as "the commission for the study of problems of the care of the aged and intellectually or physically handicapped." (1949, c. 1211, s. 1.)

§ 143-280. **Membership.**—The commission shall consist of one member from the North Carolina hospitals board of control, one member from the state board of health, one member from the state board of public welfare, one member from the boards of county commissioners, one county superintendent of public welfare, one county health officer, one clerk of the superior court. (1949, c. 1211, s. 2.)

§ 143-281. **Appointment and removal of members.**—The governor shall appoint the members of this commission, and may remove any member; he shall not be required to give any reason for the removal of any member. (1949, c. 1211, s. 3.)

§ 143-282. **Duties of commission; recommendations.**—This commission shall study the problems relating to the care of the aged with especial reference to those failing mentally and shall inquire into the methods of meeting and handling this problem in other states. It shall make a similar study of the problem of the care of the feeble-minded, with especial attention to the custodial care of intellectually handicapped persons not teachable or trainable. It shall make a study of the problems relating to the care of the physically handicapped with a special reference to those

whose physical handicap renders them incapable of self-support and shall inquire into the methods of meeting and handling this problem in other states.

It shall make recommendations to the governor offering plans for dealing with the problem of the care needed for this group, and means of clarification of the responsibility of the state and respective counties. (1949, c. 1211, s. 4.)

§ 143-283. **Compensation.**—The members of the commission shall receive for each day in actual performance of duties under this article, a per diem of seven dollars (\$7.00), and necessary travel and subsistence expenses, to be paid out of the contingency and emergency fund. (1949, c. 1211, s. 5.)

Art. 30. Buggs Island Development Commission.

§ 143-284. **Commission created; membership; terms of office; vacancies.**—There is hereby created a commission to be known as the "Buggs Island Development Commission". The commission hereby created shall consist of 10 members to be appointed by the Governor. One member of said commission shall be a resident of Vance County; one member shall be a resident of Granville County and one member shall be a resident of Warren County and four members shall be appointed from the eastern section of North Carolina as members at large, one member shall be appointed from the membership of the wildlife resources commission, one member shall be appointed from the membership of the Board of Conservation and Development, and one member shall be appointed from the membership of the North Carolina recreation commission. The members appointed from the Board of Conservation and Development, and the wildlife resources commission and the North Carolina recreation commission shall serve as ex officio members of the commission created by this article, and shall serve on this commission in such capacity only during the tenure of their terms as members of the Board of Conservation and Development and the wildlife resources commission and the North Carolina recreation commission respectively. Of the other seven members to be appointed to this commission two shall serve for two years, two shall serve for four years, and three shall serve for six years and as the terms of these commissioners expire, the Governor shall thereafter appoint members of the commission to serve for terms of six years. The Governor shall accept resignations of members of the commission and shall appoint members to serve the unexpired terms of those caused by resignation, death or otherwise. Members of the commission created by this article shall be appointed by the Governor on or before the first of July, 1951. (1951, c. 444, s. 1.)

§ 143-285. **Officers of commission; meetings; rules, regulations and bylaws; quorum.**—The commission shall at its first meeting elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the commission, but the secretary need not be a member of the commission. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be re-elected. In case of vacan-

cies by resignation or death, the office shall be filled by the commission for the unexpired term of said officer. The commission shall meet at such times and places as may be designated by its chairman and may also be called at such times as may be requested by any three members of the commission. The commission shall adopt such other rules, regulations and bylaws governing the operation of the commission as it shall deem necessary. Five members of the commission shall constitute a quorum for the transaction of business. (1951, c. 444, s. 2.)

§ 143-286. Powers and duties.—The commission shall endeavor to promote the development of the Buggs Island area situated in northeastern North Carolina, and it shall be the duty of the commission to study the development of this area and to recommend to the Department of Conservation and Development, and the wildlife resources commission and the North Carolina recreation commission policies that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation. It shall confer with the various departments, agencies, commissions and officials of the federal government and the governments of the adjoining states in connection with the development of this Buggs Island area. It shall also advise and confer with any other State officials or agencies or departments in the State of North Carolina that may be directly or indirectly concerned in the development of the resources of this area, but it shall not in any manner take over or supplant any agencies of their work in this area except so far as is expressly provided for in this article. It shall also advise and confer with various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall have full power and authority to confer with any similar commission created or acting in that part of the area lying in the State of Virginia for the purpose of working out uniform practices and plans affecting the entire area in both states. (1951, c. 444, s. 3.)

§ 143-287. Biennial report; suggestions and recommendations.—The commission shall make a biennial report to the Governor covering its work up to January 1st preceding each session of the General Assembly. It shall also file any such suggestions or recommendations as it deems proper with the Department of Conservation and Development, the wildlife resources commission and the North Carolina recreation commission in respect to such matters as might be of interest to or affect such department or commission. (1951, c. 444, s. 4.)

§ 143-288. Expenses.—The actual travel and subsistence expenses incurred by the ex officio members of the commission shall be paid from the funds of the respective agencies. The other members of the commission shall receive their necessary traveling expenses incurred while attending meetings of the commission and also such additional traveling expenses in connection with the business of the commission as shall be approved by the Director of the Budget, which ex-

penses shall be paid from funds of the commission created by this article when such funds have been provided from the sources hereinafter referred to. (1951, c. 444, s. 5.)

§ 143-289. Contributions from certain counties and municipalities authorized; other grants or donations.—The boards of county commissioners of the counties of Granville, Vance and Warren and the municipalities within these counties are authorized and empowered in their discretion to make annual contributions to the commission for the purpose of defraying the necessary expenses of operation and the commission is authorized and empowered to accept grants or donations from any interested citizens or from any state or federal agency. (1951, c. 444, s. 6.)

Editor's Note.—Session Laws 1951, c. 1059, s. 8 provides: "There is hereby appropriated out of the General Fund of the State the sum of twenty thousand dollars (\$20,000.00) for the use of the Industrial Commission in defraying salaries, travel, costs, and other expenses incident to carrying out the provisions of this act during the biennium 1951-1953.

"The sum appropriated in this section shall be used one-half to carry out the provisions of this act as to claims hereafter filed."

§ 143-290. Requests for funds.—The wildlife resources commission and the Department of Conservation and Development and the North Carolina recreation commission are authorized and empowered to include in their budget request for funds to aid and support the work of the commission. (1951, c. 444, s. 7.)

Art. 31. Tort Claims against State Departments and Agencies.

§ 143-291. Industrial commission constituted a court to hear and determine claims; damages.—The North Carolina industrial commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the State Highway and Public Works Commission, and all other departments, institutions, and agencies of the State. The industrial commission shall determine whether or not each individual claim arose as a result of a negligent act of a State employee while acting within the scope of his employment and without contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted. If the commission finds that there was such negligence on the part of a State employee while acting within the scope of his employment which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of eight thousand dollars (\$8,000.00). (1951, c. 1059, s. 1.)

Editor's Note.—Section 13 of the act inserting this article lists numerous claims against the various State departments, institutions and agencies, which "shall be heard and determined by the Industrial Commission as provided in this act, and each claimant upon request shall furnish the Industrial Commission the information provided for" in § 143-297.

§ 143-292. Notice of determination of claim; appeal to full commission.—Upon determination of said claim the commission shall notify all parties concerned in writing of its decision and either party shall have seven days after receipt of such notice within which to file notice of appeal with the industrial commission. Such appeal, when so taken, shall be heard by the industrial commission, sitting as a full commission, on the basis of the record in the matter and upon oral argument of the parties, and said full commission may amend, set aside, or strike out the decision of the hearing commissioner and may issue its own findings of fact and conclusions of law. Upon determination of said claim by the industrial commission, sitting as a full commission, the commission shall notify all parties concerned in writing of its decision. (1951, c. 1059, s. 2.)

§ 143-293. Appeals to superior and supreme courts.—Either the claimant or the State may, within 30 days of the date of the decision and award of the full commission or within 30 days after receipt of such decision and award, to be sent by registered mail but not thereafter, appeal from the decision of the commission to the superior court of the county in which the claim arose. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the commission shall be conclusive if there is any competent evidence to support them: Provided, the commission shall have 60 days after receipt of notice of appeal, properly served on the opposing party and the industrial commission, within which to prepare and furnish to the appellant or his attorney a certified transcript of the record in the case for filing in the superior court, and the time for docketing said appeal shall not begin to run until this transcript has been furnished to the appellant or his attorney. Either party may appeal from the decision of the superior court to the Supreme Court as in ordinary civil actions. (1951, c. 1059, s. 3.)

§ 143-294. Appeal to superior court to act as supersedeas.—The appeal from the decision of the industrial commission to the superior court shall act as a supersedeas, and the State department, institution or agency shall not be required to make payment of any judgment until the questions at issue therein shall have been finally determined as provided in this article. (1951, c. 1059, s. 4.)

§ 143-295. Settlement of claims.—Any claim hereinafter listed, or any other claim hereinafter filed with the industrial commission, may be settled upon agreement between the claimant and the department, institution, or agency of the State involved without a formal hearing. Such settlements shall be subject to approval, however, by the office of the Attorney General of North Carolina with reference to all claims against all departments, institutions, and agencies of the State other than the State Highway and Public Works Commission, and settlements of claims against the State Highway and Public Works Commission shall be subject to approval by the chief counsel of that department, and all settlements shall be subject to approval by the North Carolina industrial commission. (1951, c. 1059, s. 5.)

§ 143-296. Powers of industrial commission; deputies.—The members of the industrial commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The industrial commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this article vested in the members of the industrial commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workmen's Compensation Act when assigned to do so by the industrial commission. (1951, c. 1059, s. 6.)

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing.—In all claims listed in § 13 of chapter 1059 of the Session Laws of 1951, and all claims which may hereafter be filed against the various departments, institutions, and agencies of the State, the claimant or the person in whose behalf the claim is made shall file with the industrial commission an affidavit in duplicate, setting forth the following information:

(a) The name of the claimant.

(b) The name of the department, institution or agency of the State against which the claim is asserted, and the name of the State employee upon whose alleged negligence the claim is based.

(c) The amount of damages sought to be recovered.

(d) The time and place where the injury occurred.

(e) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim.

Upon receipt of such affidavit in duplicate, the industrial commission shall enter the case upon its hearing docket and shall hear and determine the matter in the county where the injury occurred unless the parties agree that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard.

Immediately upon docketing the case, the industrial commission shall forward one copy of plaintiff's affidavit to the office of the Attorney General of North Carolina if the claim is asserted against any department, institution, or agency of the State other than the State Highway and Public Works Commission. If the claim is asserted against the State Highway and Public Works Commission, one copy of said affidavit shall be forwarded to the chief counsel for that department. (1951, c. 1059, s. 9.)

§ 143-298. Duty of attorney general; expenses.—It shall be the duty of the attorney general to represent all departments, institutions, and agencies of the State other than the State Highway and Public Works Commission in connection with claims asserted against them and to attend all hearings in connection therewith where the amount of the claim, in the opinion of the attorney general, is of sufficient import to require and justify such appearance. In the event the amount appropriated to the attorney general's of-

fice for travel and subsistence is insufficient to take care of the additional expense incident to attending these hearings, the governor and council of State are authorized to pay such additional travel expenses from the contingency and emergency fund. (1951, c. 1059, s. 10.)

§ 143-299. **Limitation on claims.** — All claims against any and all State departments, institutions, and agencies, except the claims enumerated in § 13 of chapter 1059 of the Session Laws of 1951, shall be forever barred unless a claim be filed with the industrial commission within two years after the accident giving rise to the injury and damage, and if death results from the accident, the claim for wrongful death shall be forever barred unless a claim be filed by the personal representative with the industrial commission within two years after such death. (1951, c. 1059, s. 11.)

§ 143-300. **Rules and regulations of industrial commission.**—The industrial commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the commission, be necessary to carry out the purpose and intent of this article. (1951, c. 1059, s. 12.)

Art. 32. Payroll Savings Plan for State Employees.

§ 143-301. **Authority of governor.**—The governor may, with the approval of the council of State, authorize any or all of the departments, institutions, and agencies of the State to establish a voluntary payroll deduction plan for the purchase of United States savings bonds by State employees, and to set up the necessary machinery for carrying out the purposes of this article. (1951, c. 1020, s. 1.)

§ 143-302. **Expenses.** — Funds may be allotted out of the contingency and emergency appropriation to defray the necessary expenses incurred by departments, institutions and agencies financed out of the general fund of the State, and departments, institutions and agencies financed out of special funds or entirely from receipts shall defray the necessary expenses incurred without ex-

pense to the general fund of the State. (1951, c. 1020, s. 2.)

§ 143-303. **Agreements of employees with heads of departments, etc.** — Any of the employees of the State of North Carolina may voluntarily enter into written agreement with heads of the department or institution or agency where employed, which has adopted the payroll savings plan, to authorize deductions from his or her salary of certain designated sums to be invested in United States saving bonds of the kind and type specified in such agreement. (1951, c. 1020, s. 3.)

§ 143-304. **Salary deductions and purchase of bonds authorized.**—Upon the execution of such agreement by any state employee with the State department, institution or agency where employed, the department, institution or agency is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee, and to show deduction on all pay rolls similar to withholding tax, retirement, insurance, hospitalization, etc. Such sums shall be held until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sum shall be invested in United States savings bonds, for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practical. Provided that no coercion of any sort shall be exercised to require any person to participate. (1951, c. 1020, s. 4.)

§ 143-305. **Cancellation of agreements.** — Such agreement may be cancelled by the employee executing the same upon giving written notice to the head of the department, institution or agency where employed not later than the 15th day of the month in which he or she desires such agreement to be terminated, and the head of the department, institution or agency may cancel any agreement, herein provided for, upon giving ten days' written notice to the affected employee. Upon the termination of the agreement the head of the department, institution or agency is hereby authorized to refund any amount of money held for the employee. (1951, c. 1020, s. 5.)

Chapter 144. State Flag, Motto and Colors.

Sec.
144-6. State colors.

§ 144-6. **State colors.**—Red and blue, of shades as adopted and appearing in the North Carolina state flag and the American flag, shall be, and

hereby are, declared to be the official state colors for the state of North Carolina.

The use of such official state colors on ribbons attached to state documents with the great seal and/or seals of state departments is permissive and discretionary but not directory. (1945, c. 878.)

Chapter 146. State Lands.

Sec. Art. 6. Correction of Grants.

146-66.1. Further extension of time for registering grants from the state.

Art. 12. Sale of Lands.

146-99. State board of education authorized to convey or lease marsh and swamp lands to state department of conservation and development.

146-100. Conveyances to contain reversionary clause.

146-101. Board to retain mineral, gas, oil and similar rights.

SUBCHAPTER I. ENTRIES AND GRANTS.

Art. 1. Lands Subject to Grant.

§ 146-1. Vacant lands; exceptions.

Applied in *Davis v. Morgan*, 228 N. C. 78, 44 S. E. (2d) 593.

§ 146-4. Swamp lands defined.

Cited in *Kelly v. King*, 225 N. C. 709, 36 S. E. (2d) 220.

Art. 6. Correction of Grants.

§ 146-66.1. Further extension of time for registering grants from the state.—The time for the registration of grants issued by the state of North Carolina, or copies of such grants duly certified by the secretary of state under his official seal, be and the same hereby is extended for a period of two years from January 1st, 1947, next ensuing, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants of any of them, acquired by any person from the state of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1947, c. 99.)

Editor's Note.—The act inserting this section provides that it shall not affect pending litigation. The word "of" in line thirteen probably should read "or".

SUBCHAPTER II. LANDS CONTROLLED BY STATE BOARD OF EDUCATION.

Art. 11. Controversies Concerning Lands.

§ 146-90. Title presumed in the board; tax titles.

Effect of Presumption as to Title on Interpretation of Deed.—The description "to the high water mark" of non-navigable arm of the sea, a broad shallow sound, restricts or limits conveyance to correctly located line of mean high water as indicated on the ground, particularly where title to marsh lands was at time lots were laid off held by state subject to disposition by state board of education, since title to swamp lands is presumed to be in board or its assignees until a valid title to such land is shown otherwise. *Kelly v. King*, 225 N. C. 709, 714, 36 S. E. (2d) 220.

Art. 12. Sale of Lands.

§ 146-99. State board of education authorized to convey or lease marsh and swamp lands to state department of conservation and development.—The state board of education is authorized and empowered in its discretion to transfer or lease to the state department of conservation and development, any or all of the marsh and swamp lands owned by it in the state, for the purpose of development, supervision, and administration of game refuges, or game preserves, or as a public hunting ground. (1945, c. 783, s. 1.)

§ 146-100. Conveyances to contain reversionary clause.—Any of the said marsh and swamp lands conveyed to the department of conservation and development for the purposes specified in § 146-99 shall contain a reversionary clause providing that upon the said state department of conservation and development ceasing to use said lands for said purposes, the same should revert back to the state board of education. (1945, c. 783, s. 2.)

§ 146-101. Board to retain mineral, gas, oil and similar rights.—All of the mineral, gas, oil, and similar rights in said land shall be reserved by the state board of education and the state department of conservation and development shall not acquire any rights to any mineral, gas, or oil rights in such marsh and swamp lands by virtue of any conveyance authorized under § 146-99. (1945, c. 783, s. 3.)

Chapter 147. State Officers.

Art. 3. The Governor.

147-33. Compensation of lieutenant governor.

Art. 4. Secretary of State.

147-43.1. Secretary of state to prepare index to acts and resolutions.

147-46.1. Publications furnished state departments, bureaus, institutions and agencies.

Art. 5. Auditor.

147-58. Duties and authority of Auditor.

Art. 6. Treasurer.

147-69.1. Deposit or investment of surplus state funds; reports of state treasurer.

Art. 3. The Governor.

§ 147-11. Salary of governor.—The salary of the governor shall be ten thousand five hundred dollars (\$10,500.00) per annum. He shall be allowed annually the sum of six hundred dollars (\$600.00) as traveling expenses in attending to the business for the state and for expenses out of the state and in the state in representing the interest of the state and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the governor while traveling outside the state on business incident to his office shall be paid by the state treasurer on a warrant issued by the auditor. Provided, that from and after the first day of January, 1949, the governor

shall receive an annual salary of fifteen thousand dollars (\$15,000.00), payable monthly. (Rev., s. 2736; Code, s. 3720; 1879, c. 240; 1901, c. 8; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; 1929, c. 276, s. 1; 1947, c. 994; C. S. 3858.)

Editor's Note.—

The 1947 amendment added the proviso.

§ 147-15. Private secretary to governor; salary; fees.—The salary of the private secretary to the governor shall be fixed by the governor, with the approval of the advisory budget commission, and shall not be in excess of five thousand dollars (\$5,000.00) per annum, and when so fixed shall be effective from and after January fourth, one thousand nine hundred and forty-five.

(1945, c. 45.)

Editor's Note.—The 1945 amendment increased the salary from \$4,500 to \$5,000 per annum. As only the first sentence was changed, the rest of the section is not set out.

§ 147-32. Compensation for widows of governors.—All widows of the governors of the state of North Carolina who were married to said governors before or during their term of office as governor of the state of North Carolina shall be paid the sum of twelve hundred (\$1,200.00) dollars per annum during the term of their natural lives, the same to be paid in equal monthly installments of one hundred (\$100.00) dollars per month out of the state treasury upon warrant duly drawn thereon: Provided, that no payment shall be made under this section unless and until the council of state shall find that the beneficiary does not have an income adequate for her support. Provided, further that such compensation shall terminate upon the subsequent remarriage of such persons. (1937, c. 416; 1947, c. 897, ss. 1, 2.)

Editor's Note.—The 1947 amendment added the last proviso and struck out the words "and who have attained, or shall hereafter attain, the age of sixty-five years" formerly appearing after the words "North Carolina" in line four.

§ 147-33. Compensation of lieutenant governor.—As authorized by article III, section eleven, of the constitution of North Carolina, the salary of the lieutenant governor is hereby fixed at two thousand and one hundred dollars (\$2,100.00) per year, which amount shall be in addition to the compensation for the lieutenant governor as the presiding officer of the senate, provided by article II, section twenty-eight, of the constitution of North Carolina. Whenever the lieutenant governor shall attend any meeting of state officials, or other meetings which by law he is required to attend, he shall be paid his necessary traveling expenses in going to and from such meetings. (1911, c. 103; 1945, c. 1; C. S. 3862.)

Editor's Note.—The 1945 amendment added the salary provision. Formerly the lieutenant governor was entitled to a per diem while attending meetings. The amendment omitted the former provision relating to payment upon proper warrant.

Art. 3A. Emergency War Powers of Governor.

§ 147-33.1. Short title.

Editor's Note.—Session Laws 1945, c. 7, re-enacted without change the first six sections of this article.

For comment on this enactment, see 21 N. C. Law Rev. 372.

§ 147-33.7. Duration of article.—This article shall be in full force and effect while the existing state of war continues with any foreign power

and for six months thereafter. None of the powers herein granted shall be thereafter exercised and no tract, order, rule or regulation made, or other action taken, pursuant to this article shall thereafter be enforceable or effective, except for the performance of an obligation theretofore incurred under this article or the prosecution of an act theretofore committed in violation thereof. Contracts, orders, rules or regulations made or other actions taken pursuant to this article prior to the convening of the general assembly of one thousand nine hundred and forty-five shall continue in effect according to their terms until the expiration date specified above, unless they shall be sooner repealed or modified by the governor, with the approval of the council of state, in the exercise of powers granted under this article, or by this or a subsequent session of the general assembly. (1943, c. 706, s. 8; 1945, c. 7.)

Editor's Note.—The 1945 amendment added the last sentence and made other changes.

Art. 4. Secretary of State.

§ 147-35. Salary of secretary of state.

Editor's Note.—Session Laws 1947, c. 1041, increased the salary of the secretary of state to \$7,500.00 per year. And Session Laws 1949, c. 1278, effective April 23, 1949, provides that the salary, from and after the expiration of the present term of office of said officer, shall be \$9,000.00 per year, payable in equal monthly installments.

§ 147-43.1. Secretary of state to prepare index to acts and resolutions.—The secretary of state shall biennially, at the beginning of each regular session of the general assembly, appoint an assistant, whose duties it shall be to prepare for publication the indexes to the acts and resolutions, both public and private, ratified by the general assembly. All index references with respect to the Session Laws shall refer to the chapter numbers of such laws in lieu of page numbers, and all index references to resolutions shall refer to the resolution numbers of the resolutions in lieu of page numbers, to the end that the indexes shall thereby be made consistent with the index to the General Statutes which refers to the section numbers and not to page numbers. (Rev., s. 4423; 1903, c. 3; 1927, c. 217, s. 1; 1951, c. 3, s. 2; C. S. 6109.)

Editor's Note.—

The 1951 amendment struck out the words "and side or marginal notes" formerly appearing after the word "indexes" in the first sentence, "it being the intent and purpose of this amendment to discontinue the requirement that marginal notes be prepared and included in the volumes of the Session Laws." The amendment also added the second sentence.

§ 147-45. Distribution of copies of session laws, and other state publications by secretary of state.

Editor's Note.—

Session Laws 1945, c. 534 amended this section by increasing from 3 to 4 the number of copies of session laws and supreme court reports to be distributed to the industrial commission.

Session Laws 1949, c. 1178, increased from 59 to 65 the number of session laws, from 54 to 56 the number of house and senate journals, and from 65 to 71 the number of supreme court reports, to be distributed to the University of North Carolina at Chapel Hill.

Session Laws 1951, c. 287, increased from 7 to 25 the number of copies of supreme court reports to be distributed to Wake Forest College.

§ 147-46.1. Publications furnished state departments, bureaus, institutions and agencies.—Upon request of any state department, bureau, institu-

tion or agency, and upon authorization by the governor and council of state, the secretary of state shall supply to such department, bureau, institution or agency copies of any state publications then available to replace worn, damaged or lost copies and such additional sets or parts of sets as may be requested to meet the reasonable needs of such departments, bureaus, institutions or agencies, disclosed by the request.

This section shall not authorize the reprinting of any state publications which would not be ordered without reference to the provisions hereof. (1947, c. 639.)

Art. 5. Auditor.

§ 147-55. Salary of auditor.

Editor's Note.—Session Laws 1947, c. 1041, increased the salary of the state auditor to \$7,500.00 per year. And Session Laws 1949, c. 1278, effective April 23, 1949, provides that the salary, from and after the expiration of the present term of office of said officer, shall be \$9,000.00 per year, payable in equal monthly installments.

§ 147-58. Duties and authority of Auditor.—The duties and authority of the State Auditor shall be as herein set out:

1. The Auditor shall be responsible for keeping a record of the appropriations, allotments, expenditures, and revenues of each State department, institution, board, commission, officer, or other agency in any manner handling State funds. These records shall be kept in summary form, or in as much detail as the Auditor may deem advisable.

2. The Auditor shall have the exclusive power and authority to issue all warrants for the payment of money upon the State Treasurer; and it shall be the Auditor's duty, before issuing the same, to examine the laws authorizing the payment thereof, and satisfy himself of the correctness of the accounts of persons applying for warrants. He shall also file in his office the voucher upon which the warrant is drawn and cite the law upon said warrant. When considered expedient, due to its size or location, a department or institution may make expenditures through a disbursing account with the State Treasurer; provided that all deposits in disbursing accounts shall be by Auditor's warrant, or otherwise, when approved by the Auditor; and further provided that copy of each voucher making withdrawals from this account, together with such supporting data as may be required by the Auditor shall be forwarded to the Auditor monthly or otherwise when required by the Auditor.

3. The Auditor shall audit annually, and at such other times as may be deemed expedient, the accounts of every state department, officer, board, commission, institution, or other agency, having the responsibility for the handling of any State funds. The Auditor shall, at such times as may be deemed expedient, audit all funds held by any institution or State agency or any funds under the control of the administration of any institution or agency except athletic funds. The Auditor shall, at such times as may be deemed expedient, audit the records of all performances staged on State property under direction of any State agency or wherein any State agency shares in a percentage of gross admission receipts. The Auditor may audit at such times as he seems expedient the accounts of any private or semi-private agency receiving State aid; provided

this shall not affect the operation and validity of § 143-20 of the General Statutes.

If the Auditor shall at any time discover any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds, or if at any time it shall come to his knowledge that any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds is contemplated but not consummated, in either case, he shall forthwith lay the facts before the Governor.

4. The Auditor shall make special investigations upon commission from the Governor.

5. Upon completion of each audit and investigation, the Auditor shall prepare a report of his findings and recommendations. He shall furnish one copy to the Budget Bureau, one copy to the head of the agency to which the report pertains, and copies to such persons as he may deem advisable.

6. The Auditor shall keep an account between the State and the Treasurer, and therein charge the Treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn or paid by him.

7. The Auditor shall examine as often as may be deemed necessary the accounts of the debits and credits in the bank book kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, to report the same forthwith, in writing to the Governor.

8. The Auditor shall require, when deemed necessary, all persons who have received moneys or securities, or have had the disposition or management of any property of the State, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require.

9. The Auditor shall require all persons who have received any moneys belonging to the State, and who have not accounted therefor, to settle their accounts; upon failure of any person to settle accounts, the Auditor is authorized and directed to call the matter to the attention of the Attorney General and furnish such information as he may direct.

10. The Auditor shall liquidate the claims of all persons against the State, in cases where there is sufficient provision of law for the payment thereof; and where there is no sufficient provision, to examine the claim and report the fact, with his opinion thereof, to the General Assembly.

11. The Auditor shall report to the Governor annually, and to the General Assembly at the beginning of each biennial session thereof, a complete statement of the funds of the State, of its revenues and of the public expenditures during the preceding fiscal year.

12. The Auditor may examine the accounts and records of any bank or trust company relating to transactions with the State Treasurer, or with any State department, institution, board, commission, officer, or other agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

13. The Auditor and his authorized agents shall have access to and may examine all books, accounts, reports, vouchers, correspondence, files, records, money, investments, and property of

any State department, institution, board, commission, officer, or other agency as it relates to the handling of State funds. Every officer or employee of any such agency having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the Auditor or any agent authorized by him to make such request. Should any officer or employee fail to perform the requirements of this section, he shall be guilty of a misdemeanor. The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as it relates to transactions with any department, board, officer, commission, institution, or other agency of the State; provided that such examination shall be limited to those things which might relate to irregularities on the part of any department, board, officer, employee, commission, institution or other State agency.

14. The Auditor shall supervise the bookkeeping and accounting system in use by any of the State departments, boards, officers, commissions, institutions and agencies. The Auditor may, as often as he deems advisable, make a detailed examination of such bookkeeping and accounting system in use and advise them of necessary improvement in the accounting procedure. Any State department, board, commission, institution, or agency which plans to change its accounting system must first submit its plan to the Auditor and the Director of the Budget and obtain approval in accordance with provision of G. S. 143-22. In devising systems of accounting, the Auditor and Director of the Budget shall take into consideration the checks and balances necessary to safeguard the receipt, disbursement, and custody of State funds.

15. Should any of the officers and/or employees of a State department or institution refuse or neglect to adopt such system of accounting as the Auditor and the Director of the Budget may devise, adopt, and promulgate, then upon suit of the Attorney General a writ of mandamus will lie to compel such adoption, and it shall be the duty of the Attorney General to forthwith institute such suit in any such case.

16. The Auditor, or his deputy, while conducting an examination authorized by these sections, shall have the power to administer oath to any person whose testimony may be required in any such examination, and to compel the appearance and attendance of such person for the purpose of such an examination. If any person shall willfully swear falsely in such an examination, he shall be guilty of perjury.

17. The Auditor may appoint a deputy auditor to perform any duties pertaining to the office, and he may appoint a deputy auditor for any specific purpose; provided that any deputy so appointed shall not be authorized to transfer authority to any other person.

18. Nothing under this article shall be construed to affect the right of the Director of the Budget to require information from State agencies as set out in § 143-9. (Rev., s. 5365; Code, s. 3350; 1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; 1919, c. 153; 1929, c. 268; 1951, c. 1010, s. 1; C. S. 7675.)

Editor's Note.—The 1951 amendment rewrote this section. Section 4 of the amendatory act provided that "nothing

contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

§ 147-59. Warrants to bear limitations; presented within sixty days.—All warrants drawn by the state auditor or any state department, or agency, bureau, or commission on the treasurer, shall bear, and there shall be printed upon the face thereof in plain type so as to be easily read, the following words, to-wit: "This warrant will not be paid if presented to the treasurer after the expiration of sixty (60) days from the date hereof"; and the state treasurer is hereby prohibited from paying any warrant drawn by the state auditor, or any state department, or agency, bureau, or commission, unless the same shall be presented within sixty (60) days from the date of such warrant. (1925, c. 246, s. 1; 1945, c. 496, s. 1.)

Editor's Note.—Prior to the amendment this section applied only to warrants drawn by the state auditor.

§ 147-60. Surrender of barred warrant; issue of new warrant.—Any person, firm or corporation holding a warrant drawn by the Auditor which cannot be paid because of the provisions of §§ 147-59 and 147-61 of the General Statutes of North Carolina may present the same to the Auditor, and upon satisfactory proof that such person, firm or corporation is the owner thereof and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, may surrender said warrant to the Auditor and cancel the same, whereupon the Auditor is authorized and empowered to issue another warrant for like amount in lieu thereof; or in his discretion, he may validate the original warrant. (1925, c. 246, s. 2; 1945, c. 496, s. 2; 1951, c. 1010, s. 3.)

Editor's Note.—The 1945 amendment substituted the words "issuing state officer, department, agency, bureau, or commission" for the words "state auditor."

The 1951 amendment deleted the words inserted by the 1945 amendment and substituted "auditor" therefor, inserted the words "and cancel the same", added the clause following the semicolon, and made other changes of a minor nature. Section 4 of the amendatory act provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

Art. 6. Treasurer.

§ 147-65. Salary of state treasurer.

Cross Reference.—As to settlement of affairs of inoperative boards and agencies, see §§ 143-267 to 143-272.

Editor's Note.—Session Laws 1947, c. 1041, increased the salary of the state treasurer to \$7,500.00 per year. And Session Laws 1949, c. 1278, effective April 23, 1949, provides that the salary, from and after the expiration of the present term of office of said officer, shall be \$9,000.00 per year, payable in equal monthly installments.

§ 147-68. To receive and disburse moneys; to make reports.

Cross Reference.—As to funds of inoperative boards and agencies, see §§ 143-267 to 143-272.

Editor's Note.—For act authorizing treasurer to pay certain bonds at exchange rate according to chapter 98 of the Public Laws of 1879, see Session Laws 1947, c. 610.

Applied in Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314.

§ 147-69. Deposits of state funds in banks regulated.—Banks having state deposits shall furnish to the auditor of the state, upon his request, a statement of the moneys which have been received and paid by them on account of the treas-

ury. The treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the auditor. The treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. No bank shall make any charge for exchange or for the collection of any warrant drawn on the treasurer or for the transmission of any funds which may come into the hands of the state treasurer, or any other state department, agency, bureau or commission; provided, that banks organized under the laws of the state of North Carolina may charge for each cashier's check issued to deputy collectors of revenue as a means of transmitting to the commissioner of revenue the proceeds of collections of revenue, not over twenty cents (20c) for each check in the amount of not over one thousand dollars (\$1,000.00), and for each check for an amount in excess of one thousand dollars (\$1,000.00), such banks may charge not over twenty cents (20c) plus one-tenth of one per cent (.1%) of the amount of such check in excess of one thousand dollars (\$1,000.00). The commissioner of banks and the bank examiners, when so required by the state treasurer, shall keep the state treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the state from loss. The state treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit.

(1945, c. 644; 1949, c. 1183.)

Editor's Note.—The 1945 amendment rewrote the fourth sentence of the first paragraph, and the 1949 amendment inserted the proviso thereto. As the second paragraph was not affected by the amendments it is not set out.

For comment on the 1949 amendment, see 27 N. C. Law Rev. 425.

§ 147-69.1. Deposit or investment of surplus state funds; reports of state treasurer.—It shall be the duty of the state treasurer, with assistance of the director of the budget, on or before the tenth day of each calendar month, and upon request of the governor or the council of state, at any other time, to carefully analyze the amount of cash in the general fund of the state and in all special funds credited to any special purpose designated by the general assembly or held to meet the budgets or appropriations for maintenance and permanent improvements of the several institutions, boards, departments, commissions, agencies, persons or corporations of the state, and to determine in his opinion when the cash in any such funds is in excess of the amount required to meet the current needs and demands on such funds, and report his findings to the governor and the council of state. The governor and the state treasurer, acting jointly, with the approval of the council of state, are hereby authorized and empowered to deposit such excess funds at interest with any official depository of the state upon such terms as may be authorized by applicable laws of the United States and the state of North Carolina, or to invest such excess funds in bonds or certificates of indebtedness or treasury bills of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of Amer-

ica, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the state of North Carolina, or in certificates of deposit issued by banks or official depositories within the state of North Carolina yielding a return at rates not less than U. S. treasury notes and certificates of indebtedness of comparable maturities. The said funds shall be so invested that in the judgment of the governor and state treasurer they may be readily converted into money at such time as the money will be needed. The interest received on all such deposits and the income from such investments, unless otherwise required by law, shall be paid into the state's general fund.

The state treasurer shall include in his biennial reports to the general assembly a full and complete statement of all funds invested by virtue of the provisions of this section, the nature and character of investments therein, and the revenues derived therefrom, together with all such other information as may seem to him to be pertinent for the full information of the general assembly with reference thereto.

The state treasurer shall also cause to be prepared a quarterly statement on or before the tenth day of each January, April, July and October in each year. This statement shall show the amount of cash on hand, the amount of money on deposit and the name of each depository, and all investments for which he is in any way responsible. This statement shall be delivered to the governor as director of the budget, and a copy thereof shall be posted in the office of the state treasurer for the information of the public. (1943, c. 2; 1949, c. 213.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 147-72. Ex officio treasurer of state institutions; duties as such.—The treasurer shall be ex officio the treasurer of the department of agriculture, of the North Carolina state college of agriculture and engineering, of the North Carolina school for the deaf and dumb at Morganton, of the North Carolina institution for the deaf and dumb and the blind at Raleigh, for the state hospitals (for the insane) at Raleigh, Morganton and Goldsboro and for the state's prison.

(1947, c. 781.)

Editor's Note.—The 1947 amendment struck out "soldiers home" from the list of institutions in the first sentence. As the rest of the section was not affected by the amendment it is not set out.

§ 147-77. Daily deposit of funds to credit of treasurer.—All funds belonging to the state of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State, or any agency, department, division or commission thereof, except officers and the clerk of the Supreme Court, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided, that the Treasurer may re-

fund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after thirty days trial. (1925, c. 128, s. 1; 1945, c. 159.)

Editor's Note.—The 1945 amendment struck out the words "or other designated depository" formerly appearing after the word "company" in line eleven.

Chapter 148. State Prison System.

Art. 3A. Prison Camp for Youthful and First Term Offenders.

- Sec.
148-49.1. Conversion of "Prisoners of War" Camp at Camp Butner into prison camp for youthful and first term offenders.
148-49.2. "Youthful offender" and "first term offender" defined.
148-49.3. Employment and supervision of prisoners.
148-49.4. Expenses incident to conversion of camp and maintenance of prisoners.
148-49.5. Adoption of rules and regulations.

Art. 4. Paroles.

- 148-61.1. Revocation of parole by governor; conditional or temporary revocation.
148-62. Discretionary revocation of parole upon conviction of crime.

Art. 4A. Out-of-State Parolee Supervision.

- 148-65.1. Governor to execute compact; form of compact.
148-65.2. Title of article.

Art. 6. Reformatory.

- 148-71 to 148-73. [Repealed.]

Art. 7. Bureau of Identification.

- 148-79. Fingerprints taken; photographs.

Art. 8. Compensation to Persons Erroneously Convicted of Felonies.

- 148-82. Provision for compensation.
148-83. Form, requisites and contents of petition; nature of hearing.
148-84. Evidence; action by commissioner of pardons; payment and amount of compensation.

Art. 9. Prison Advisory Council.

- 148-85. Creation of council; purpose.
148-86. Membership; chairman.
148-87. Meetings.
148-88. Function.

Art. 2. Prison Regulations.

- § 148.11. State highway and public works commission to make regulations.

This section is constitutional. State v. Revis, 193 N. C. 192, 136 S. E. 346, 50 A. L. R. 98; State v. Carpenter, 231 N. C. 229, 56 S. E. (2d) 713.

Immunity of Prison Official from Prosecution.—The fact that disciplinary punishment inflicted on a prisoner by a prison official is administered in accordance with the rules and regulations of the State Highway and Public Works Commission does not render the prison official immune to prosecution for assault unless the particular regulation relied on is within the statutory authority of the Commission. State v. Carpenter, 231 N. C. 229, 56 S. E. (2d) 713.

§ 148-20. Whipping or flogging prisoners.

Quoted in State v. Carpenter, 231 N. C. 229, 56 S. E. (2d) 713.

Art. 3. Labor of Prisoners.

§ 148-44. Segregation as to race, sex and age.—

The commission shall provide separate sleeping quarters and separate eating space for the different races and the different sexes; and shall provide for segregation of youthful offenders as required by §§ 15-210 to 15-215. (1933, c. 172, s. 25; 1947, c. 262, s. 2.)

Cross References.—As to segregation of youthful offenders generally, see §§ 15-210 to 15-216. As to prison camp for such offenders, see §§ 148-49.1 to 148-49.5.

Editor's Note.—The 1947 amendment rewrote the provision as to youthful offenders.

Art. 3A. Prison Camp for Youthful and First Term Offenders.

§ 148-49.1. Conversion of "Prisoners of War" Camp at Camp Butner into prison camp for youthful and first term offenders.—The state hospitals board of control be authorized and empowered to convert the old "Prisoners of War" Camp located on its property at Camp Butner into a modern prison camp or guardhouse with a capacity of one hundred (100) for the purpose of receiving and detaining such youthful and first term prisoners as may be sent it by the state highway and public works commission under such rules and regulations as may be jointly adopted by the state highway and public works commission and the North Carolina hospitals board of control. Should the North Carolina hospitals board of control find it more practicable to establish the prison camp or guardhouse on some other property owned by the State at Butner, then, and in such event, such prison camp or guardhouse may be constructed at such other location on property owned by the State at Butner. (1949, c. 297, s. 1; 1951, c. 250.)

Cross Reference.—As to segregation of youthful offenders generally, see §§ 15-210 to 15-216.

Editor's Note.—The 1951 amendment added the last sentence.

§ 148-49.2. "Youthful offender" and "first term offender" defined.—For the purposes of this article a "youthful offender" and a "first term offender" is a person (1) who, at the time of imposition of sentence, is less than 25 years of age, and (2) who has not previously served a term in any jail or prison. (1949, c. 297, s. 2.)

§ 148-49.3. Employment and supervision of prisoners.—Prisoners received at Camp Butner prison shall be employed in work on the farm, workshops, the upkeep and maintenance of the property located at Camp Butner or in such other similar work as may be determined by the state hospitals board of control and the state highway and public works commission. The said prisoners to be under the general supervision of the agents and employees of the state highway and public works commission or of such employees of the state hospitals board of control as may be agreed

upon by the two state agencies. (1949, c. 297, s. 3.)

§ 148-49.4. Expenses incident to conversion of camp and maintenance of prisoners.—All expenses incident to the conversion of the old "Prisoners of War" Camp shall be borne by the state hospitals board of control and paid out of the proceeds from the sale of surplus property owned by said board and located at Camp Butner. Said prison camp or guardhouse to fully meet the requirements of the state highway and public works commission as to construction, plans and specifications. The cost of the maintenance of prisoners assigned to said prison shall be borne by the state hospitals board of control. (1949, c. 297, s. 4.)

§ 148-49.5. Adoption of rules and regulations.—As soon as practicable the state hospitals board of control and the state highway and public works commission shall jointly adopt such rules and regulations as they may deem necessary to fully carry out the intents and purposes of this article. (1949, c. 297, s. 5.)

Art. 4. Paroles.

§ 148-61.1. Revocation of parole by governor; conditional or temporary revocation.—The governor may at any time, in his discretion, revoke the order of parole of any parolee. If any parolee shall have his parole revoked, he shall thereafter be returned to the penal institution having custodial jurisdiction over him, and the time such parolee was at liberty on parole shall not be counted as any portion of or part of the time served on his sentence. The governor may, in his discretion, enter an order revoking a parole conditionally or for a temporary period of time. Upon issuing such order of conditional or temporary revocation, such parolee may be arrested without warrant by any peace officer or officers or parole officers. After such conditional or temporary revocation of parole, the parolee shall be held for a reasonable length of time, during which the commissioner of paroles shall determine whether or not the conditions of said parole have been violated. If it is determined by the commissioner of paroles that the conditions of said parole have been violated, the commissioner of paroles shall recommend to the governor his findings on the matter. If it should be determined by the commissioner of paroles that there has been no violation of the conditions of said parole, then such parolee or paroled prisoner shall be discharged upon his original parole. (1951, c. 947, s. 1.)

§ 148-62. Discretionary revocation of parole upon conviction of crime.—If any parolee, while being at large upon parole, shall commit a new or fresh crime, and shall enter a plea of guilty or be convicted thereof in any court of record, then, in that event, his parole may be revoked according to the discretion of the governor and at such time as the governor may think proper. If such parolee, while being at large upon parole, shall commit a new or fresh crime and shall have his parole revoked, as provided above, he shall be subject, in the discretion of the governor, to serve the remainder of the first or original sentence upon which his parole was granted, after the completion or termination of the sentence for

said new or fresh crime. Said remainder of the original sentence shall commence from the termination of his liability upon said sentence for said new or fresh crime. The governor, however, may, in his discretion, direct that said remainder of the original sentence shall be served concurrently with said second sentence for said new or fresh crime. (1935, c. 414, s. 12; 1951, c. 947, s. 2.)

Editor's Note.—The 1951 amendment rewrote this section. Prior to the amendment the section provided for automatic revocation of parole upon conviction of crime.

Art. 4A. Out-of-State Parolee Supervision.

§ 148-65.1. Governor to execute compact; form of compact.—The governor of this State is hereby authorized and directed to execute a compact on behalf of the State of North Carolina with any of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An act granting the consent of congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly-constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to

obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other state party hereto. (1951, c. 1137, s. 1.)

§ 148-65.2. Title of article.—This article may be cited as the "Uniform Act for Out-of-State Parolee Supervision." (1951, c. 1137, s. 2.)

Art. 5. Farming out Convicts.

§ 148-66. Cities and towns and board of agriculture may contract for prison labor.

Editor's Note.—

For comment on the 1943 amendment, see 21 N. C. Law Rev. 333.

Art. 5A. Prison Labor for Farm Work.

§ 148-70.1. Commission authorized to furnish prison labor to farmers.

For comment on this and the six following sections, see 21 N. C. Law Rev. 333.

Art. 6. Reformatory.

§§ 148-71 to 148-73: Repealed by Session Laws 1947, c. 262, s. 3.

Art. 7. Bureau of Identification.

§ 148-79. Fingerprints taken; photographs.

No officer, however, shall take the photograph of a person arrested and charged or convicted of a misdemeanor unless such person is a fugitive

from justice, or unless such person is, at the time of arrest, in the possession of goods or property reasonably believed by such officer to have been stolen, or unless the officer has reasonable grounds to believe that such person is wanted by the federal bureau of investigation, or the state bureau of investigation, or some other law enforcing officer or agency. (1925, c. 228, s. 6; 1945, c. 967.)

Editor's Note.—The 1945 amendment added the above sentence at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Art. 8. Compensation to Persons Erroneously Convicted of Felonies.

§ 148-82. Provision for compensation.—Any person who, having been convicted of felony and having been imprisoned therefor in a state prison of this state, and who was thereafter or who shall hereafter be pardoned by the governor upon the grounds that the crime with which he was charged either was not committed at all or was not committed by him, may as hereinafter provided present by petition a claim against the state for the pecuniary loss sustained by him through his erroneous conviction and imprisonment. (1947, c. 465, s. 1.)

Editor's Note.—For a brief comment on this article, see 25 N. C. Law Rev. 403.

§ 148-83. Form, requisites and contents of petition; nature of hearing.—Such petition shall be addressed to the commissioner of pardons, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the commissioner of pardons shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the attorney general, at least fifteen days before the time fixed therefor. (1947, c. 465, s. 2.)

§ 148-84. Evidence; action by commissioner of pardons; payment and amount of compensation.—At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the attorney general may introduce counter affidavits in refutation. If the commissioner of pardons finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the commissioner of pardons shall report the facts, together with his conclusions and recommendations to the governor, and the governor, with the approval of the council of state, may pay to the claimant out of the contingency and emergency fund, or out of any other available state fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars (\$500.00) for each year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of five thousand dollars (\$5,000.00). (1947, c. 465, s. 3.)

Art. 9. Prison Advisory Council.

§ 148-85. Creation of council; purpose.—There is hereby created a prison advisory council (hereinafter called "the council") for the purpose of promoting in the state prison system practices consistent with the best modern concepts and experience, directed toward the rehabilitation of prisoners. (1949, c. 359.)

§ 148-86. Membership; chairman.—The council shall be composed of the following members: five persons to be appointed by the governor of North Carolina by reason of their interest in and knowledge of prison administration and the rehabilitation and the education of prisoners. One member shall be designated by the governor to be the chairman of the council. Initial appointments shall be for the following terms: one member for six years; two members for four years; and two members for two years. All appointments thereafter made shall be for terms of six years. In addition to the five regular members, the attorney general and the commissioner of public welfare shall be ex-officio members of the said council.

Each member of the council, except the ex-officio members, shall receive as compensation the amounts set forth in section 4 of the Budget Appropriation Bill for the Biennium 1949-51, this compensation to be paid out of the contingency and emergency fund. (1949, c. 359.)

§ 148-87. Meetings.—The council shall meet at least semi-annually and at any other time at the call of the chairman. After each meeting, a written report shall be sent to the chairman of the State highway and public works commission. (1949, c. 359.)

§ 148-88. Function.—It is the duty of the council to advise with the prison director on all matters pertaining to prison administration, the employment, training, custody, and discipline of prisoners and all other phases of prison management. The council shall study thoroughly the state prison system and shall from time to time make recommendations for the improvement thereof to the state highway and public works commission. (1949, c. 359.)

Chapter 150. Uniform Revocation of Licenses.

§ 150-1. Procedure for hearings on suspension or revocation of licenses by certain state boards and commissions.—No license issued by the state board of examiners of electrical contractors, state licensing board for contractors, state board of accountancy, state board of embalmers, board of chiropody examiners, North Carolina board of veterinary medical examiners, board of barber examiners, state board of registration for engineers and land surveyors, cosmetologists board, tile contractors board, plumbing and heating board, board of boiler rules, North Carolina board of nurse examiners, and board of photographic examiners shall be revoked or suspended except according to a procedure which shall conform as near as may be to the procedure now provided by law for hearings before referees in compulsory references and shall include (1) a notice in writing to the person whose license is involved, stating the charge or charges against the said licensee and fixing a date and place for a hearing which shall not be less than thirty days from the issuance of said notice upon the person to whom it is issued, and shall be served upon the person named therein by an officer authorized by law to serve process,

or by mailing by registered mail to the person named therein at the address given in the license or the last known address; (2) a hearing before the board, or a member thereof specifically designated by the board for the purpose of hearing the matters involved, at which hearing the accused shall have the right to be present to enter his defense, if any, and be represented by counsel and produce evidence by witnesses or records; (3) notice of action by the board which shall be a written report containing findings of fact and conclusions of law thereon; (4) appeal from the action of the board to the superior court of the county in which the hearing was held or to the superior court of Wake county upon filing of an appeal bond in the sum of fifty dollars which shall act as a supersedeas. (1939, c. 218, s. 1; 1947, c. 86, s. 1.)

Editor's Note.—

The 1947 amendment inserted "North Carolina board of nurse examiners" in the list of boards to which this section is applicable. Section 2 of the amendatory act provided that this chapter shall be applicable to all hearings on suspension or revocation of licenses by the North Carolina board of nurse examiners.

Chapter 151. Constables.

§ 151-1. Election and term.

Stated in *Taylor v. Wake Forest*, 228 N. C. 346, 45 S. E. (2d) 387.

§ 151-2. Oaths to be taken.

Stated in *Taylor v. Wake Forest*, 228 N. C. 346, 45 S. E. (2d) 387.

§ 151-7. Powers and duties.

Local Modification.—Scotland: 1951, c. 692.

Powers and Duties Are Co-Extensive with Limits of County.—Constables have the same power and authority as they were invested with prior to our constitutional and statutory provisions, and their powers and duties are co-extensive with the limits of the county in which they are elected. *Taylor v. Wake Forest*, 228 N. C. 346, 45 S. E. (2d) 387.

Chapter 152. Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Editor's Note.—

Delete the Editor's Note appearing in the original. For an article discussing the provisions of this chapter and suggesting the abolition of the coroner system in North Carolina, see 26 N. C. Law Rev. 96.

§ 152-3. Coroner's bond.

Local Modification.—Yancey: 1945, c. 271.

§ 152-5. Fees of coroners.

Local Modification.—Buncombe: 1949, c. 910; Cabarrus: 1947, c. 410; Camden: 1947, c. 200; Onslow: 1951, c. 516; Pender: 1947, c. 52; Richmond: 1951, c. 267; Rockingham: 1951, c. 430; Sampson: 1947, c. 747.

§ 152-7. The duties of coroners with respect to inquests and preliminary hearings.

Local Modification.—Nash: 1951, c. 502.

Chapter 153. Counties and County Commissioners.

Art. 2. County Commissioners.

Sec.

- 153-9.1. Contract for photographic recording of instruments and documents filed for record.
- 153-9.2. Original instruments and documents constitute temporary recording; return to owners.
- 153-9.3. Preservation and use of film or sensitized paper.
- 153-9.4. Removal of originals for photographing.
- 153-9.5. Removal of public records for photographing.
- 153-9.6. Photographic recording of public records; preservation and use of film or sensitized paper.
- 153-9.7. Sections 153-9.1 to 153-9.7 confer additional powers.

Art. 2A. Photographic Reproduction of Records.

- 153-15.1. Authority to acquire equipment, etc., for making reproductions; filing, docking or recording of reproductions.
- 153-15.2. Authority to cause reproductions to be made; reproducing material and device; preservation and use of film.
- 153-15.3. Reproductions to be deemed originals; facsimiles, etc.
- 153-15.4. Disposition of originals.
- 153-15.5. Authority to execute contracts; joint use of facilities by two or more counties.
- 153-15.6. Duplicate sets or copies.

Art. 7. Courthouse and Jail Buildings.

- 153-49.1. Inspection of jails.

Art. 9. County Finance Act.

- 153-92.1. General application of provision as to majority vote.

Art. 10A. Capital Reserve Funds.

- 153-142.6½. Increases to capital reserve fund.
- 153-142.21. Termination of power to establish or increase a capital reserve fund.

Art. 1. Corporate Existence and Powers of Counties.

§ 153-1. County as corporation; acts through commissioners.

Must Act through Commissioners in Legal Session.—

In accord with original. See Jefferson Standard Life Ins. Co. v. Guilford County, 225 N. C. 293, 34 S. E. (2d) 430.

§ 153-2. Corporate powers of counties.

Cross References.—As to authority to lease, convey or ac-

quire property for use as armory, see § 143-235. As to appropriations for benefit of military units, see § 143-236.

Suits in Name of County.—

In the absence of a refusal of the board of commissioners of a county to institute an action in its behalf, the action must be instituted in the name of the county or on relation of the county. Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468.

Art. 2. County Commissioners.

§ 153-4. Election and number of commissioners.

Local Modification.—Bertie: 1951, c. 1106, s. 1; Forsyth: 1949, c. 851; Nash: 1951, c. 1106, s. 1.

§ 153-8. Meetings of the board of commissioners.—The board of commissioners of each county shall hold a regular meeting at the courthouse on the first Monday in each month unless the said first Monday falls on a legal holiday, in which event the meeting shall be held on the following Tuesday of the month. The board may adjourn its regular meetings from day to day until the business before it is disposed of. Special meetings may be held by call of the chairman of the board upon two days' written notice being given to each of the board members and posting such notice on the courthouse bulletin board. A majority of the board shall constitute a quorum. At each regular December meeting the board shall choose one of its members as chairman for the ensuing year and in his absence, the members present shall choose a temporary chairman. (Rev., s. 1317; Code, s. 706; 1945, c. 132; 1951, c. 904, s. 1; C. S. 1296.)

Editor's Note.—The 1951 amendment rewrote this section. Section 2 of the amendatory act provided that all laws except public-local and private laws in conflict with the provisions of the act were repealed.

§ 153-9. Powers of board.

6. Special Tax Authorized for Certain Purposes; Limit of Rate.—

Local Modification.—Gaston: 1945, c. 207.

Tax within the Limitation of Const., Art. V, § 6.—Where a county levies a tax within the limitation of const., art. V, § 6, its levy for poor relief is limited to a tax rate of five cents under the provisions of this section. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371.

Resolution Correcting Record as to Purpose of Levy.—Where tax records of county disclose a fifteen-cent levy for general purposes and a seven-cent levy for county poor, two cents of the seven-cent levy is patently excessive and no part thereof can be justified for items of general expense, but where, in action by taxpayer to recover the amount paid under protest under the two-cent levy, defendant county introduces resolutions of the board correcting records to show that two cents was for administration of old age assistance and aid to dependent children, and for salaries of the county accounting and farm agent, non-suit is proper, since levy is then for special purposes with special approval of the legislature under §§ 108-17, et seq., and §§ 108-44, et seq., and since, in the absence of evidence to the contrary the resolution correcting the records will

be presumed bona fide. *Atlantic Coast Line R. Co. v. Duplin County*, 226 N. C. 719, 40 S. E. (2d) 371.

Levy for Public Welfare in Beaufort.—The board of county commissioners of Beaufort County having levied in the year 1942 a tax rate of fifteen cents on the one hundred dollars property valuation for general purposes, the limit fixed by Article V, section 6, of the North Carolina Constitution, the levy for public welfare or poor relief was limited to a rate of five cents on the one hundred dollars property valuation under provisions of this section. *Atlantic Coast Line R. Co. v. Beaufort County*, 224 N. C. 115, 118, 29 S. E. (2d) 201.

Conflict with Other Laws.—Cumberland County is authorized by this section to levy annually five cents only on the one hundred dollar valuation, for maintaining county homes for the aged and infirm and for similar purposes. Conceding that §§ 153-9, subsection 28, and 153-152 constitute special approval of the General Assembly for unlimited levy for a special purpose, they are general acts and conflict with the provisions of this section. *Atlantic Coast Line R. Co. v. Cumberland County*, 223 N. C. 750, 28 S. E. (2d) 238.

7. Same.—In Certain Counties.—Subject to the approval of the director of local government, the boards of county commissioners of Alamance, Alleghany, Anson, Avery, Buncombe, Burke, Cherokee, Clay, Cleveland, Dare, Duplin, Durham, Edgecombe, Graham, Granville, Halifax, Henderson, Iredell, Jackson, McDowell, Macon, Mitchell, Montgomery, Orange, Pender, Perquimans, Person, Polk, Randolph, Rutherford, Sampson, Scotland, Stokes, Swain, Tyrrell, Watauga and Wilson counties are hereby authorized to levy such special property taxes as may be necessary not to exceed five cents on the one hundred dollars valuation for the following special purposes respectively, in addition to any tax now allowed by law for such purposes and in addition to the rate allowed by the constitution: (1) For the expense of the quadrennial valuation or assessment of taxable property, (2) for the expense of holding courts in the county levying the tax and the expense of maintenance of jails and jail prisoners. (1931, c. 441; 1933, c. 54; 1935, c. 330; 1937, c. 41; 1939, cc. 190, 336; 1943, c. 646; 1951, c. 753.)

Editor's Note.—The 1951 amendment inserted Cleveland in the list of counties set out in this subsection.

10. To Require Officers to Report.—

Cited in *Roberts v. McDevitt*, 231 N. C. 458, 57 S. E. (2d) 655.

12. To Fill Vacancies.—

Office of Tax Manager.—Where there is a vacancy in the office of tax manager for a county, the board of county commissioners has the power by analogy to §§ 153-9(12) and 153-9(10) to appoint some qualified person to perform the duties of the office for the remainder of the term. *Roberts v. McDevitt*, 231 N. C. 458, 57 S. E. (2d) 655.

14. To Sell or Lease Real Property.—

Cross Reference.—As to execution of warranty deeds and relief from personal liability thereon, see § 160-61.1.

Commissioners Do Not Have Power to Mortgage.—The name "Vaughn" in the case cited in the original should be "Threadgill."

17. Roads and Bridges.—To supervise the maintenance of neighborhood public roads or roads not under the supervision and control of the State Highway and Public Works Commission and bridges thereon: Provided, however, county funds may not be expended for such maintenance except to the extent such expenditures are otherwise authorized by law; to exercise such authority with regard to ferries and toll bridges on public roads not under the supervision of the State Highway and Public Works Commission as is granted in §

136-88 of the Chapter on Roads and Highways or by other Statutes; to provide draws on all bridges not on roads under supervision of the State Highway and Public Works Commission where the same may be necessary for the convenient passage of vessels; to allow and contract for the building of toll bridges on all roads not under the supervision of the State Highway and Public Works Commission and to take bond from the builders thereof. It is the intent of this subsection that the powers and authorities herein granted shall be exercised in accordance with the provisions of the Chapter on Roads and Highways.

The boards of commissioners of the several counties likewise have power to close any street or road or portion thereof (except those lying within the limits of municipalities) that is now or may hereafter be opened or dedicated, either by recording of a subdivision plat or otherwise. Any individuals owning property adjoining said street or road who do not join in the request for the closing of said street or road shall be notified by registered letter of the time and place of the meeting of the commissioners at which the closing of said street or road is to be acted upon. Notice of said meeting shall likewise be published once a week for four weeks in some newspaper published in the county, or if no newspaper is so published, by posting a notice for thirty days at the courthouse door and three other public places in the county. No further notice shall be necessary: Provided, that if the street or road has previously been accepted by the state highway and public works commission for maintenance, the state highway and public works commission shall be likewise notified of said meeting by registered letter. If it appears to the satisfaction of the commissioners that the closing of said road is not contrary to the public interest and that no individual owning property in the vicinity of said street or road or in the subdivision in which is located said street or road will thereby be deprived of reasonable means of ingress and egress to his property, the board of commissioners may order the closing of said street or road; provided, that any person aggrieved may appeal within thirty days from the order of the commissioners to the superior court of the county, where the same shall be heard de novo. Upon such an appeal, the superior court shall have full jurisdiction to try said matter upon the issues arising and to order said street or road closed upon proper findings of fact by the jury. A certified copy of said order of the commissioners (or of the judgment of the superior court in the event of an appeal) shall be filed in the office of the register of deeds of said county. Upon the closing of a street or road in accordance with the provisions hereof, all right, title and interest in such portion of such street or road shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to such portion of such street or road, and the title of each of such persons, firms or corporations shall, for the width of the abutting land owned by such persons, firms or corporations, extend to the center of such street or road.

The board of aldermen or other governing body of any municipality shall have the same power and authority with respect to roads, streets or

other public ways which are inside the corporate limits of such municipality as given to the county commissioners by the second paragraph of this subsection with respect to roads, streets or public ways outside the corporate limits of a municipality.

Copies of the registered letters giving the notice required by the second paragraph of this subsection, and the return receipts or other good and sufficient evidence of giving the required notice, shall be recorded in the register of deeds office, together with the resolution of such county or municipal governing body (or with the judgment of the superior court, in cases where an appeal was taken). (1949, c. 1208, ss. 1-3.)

Editor's Note.—The 1949 amendment added the last three paragraphs of this subsection.

28. To Erect, Divide and Alter Township.—

Conflict with § 153-9, subsection 6.—Conceding that this section and § 153-152 constitute special approval of the General Assembly for unlimited levy for a special purpose, they are general acts and conflict with the provisions of § 153-9, subsection 6. *Atlantic Coast Line R. Co. v. Cumberland County*, 223 N. C. 750, 28 S. E. (2d) 238.

Cited in *Atlantic Coast Line R. Co. v. Beaufort County*, 224 N. C. 115, 29 S. E. (2d) 201.

39. County Fire Departments.—Any county shall have power to provide for the organization, equipment, maintenance and government of fire companies and fire department; and, in its discretion, may provide for a paid fire department, fix the compensation of the officers and employees thereof, and make rules and regulations for its government. The board of commissioners of the county may make the necessary appropriations for the expenses thereof and levy annually taxes for the payment of same as a special purpose, in addition to any allowed by the constitution. (1945, c. 244.)

40. County Planning Board.—The county commissioners are authorized to create a board to be known as the planning board, whose duty it shall be to make a careful study of the resources, possibilities and needs of the county, particularly with respect to the conditions which may be injurious to the public welfare or otherwise injurious, and to make plans for the development of the county. The commissioners shall appoint not less than three nor more than five persons on said board.

The planning board, when established, shall make a report at least annually to the county commissioners, giving information regarding the condition of the county, and any plans or proposals for the development of the county and estimates of the cost thereof.

The county commissioners may appropriate to the planning board such amount as they may deem necessary to carry out the purposes of its creation and for the improvement of the county, and shall provide what sums, if any, shall be paid to such board as compensation.

The county commissioners are hereby authorized to enter into any agreements with any other county, city or town for the establishment of a joint planning board. (1945, c. 1040, s. 1.)

Local Modification.—Buncombe, Chatham, Stanly, Vance, Wake: 1945, c. 1040, ss. 2½, 3.

Editor's Note.—Session Laws 1949, c. 876, amended Session Laws 1945, c. 1040, s. 3, by striking out the words "Durham county," which had the effect of removing "Durham" from the list of counties appearing under "Local Modification" and making subsection 40 applicable to Durham county.

41. Expenditure of Surplus Funds for Library Purposes.—The board of county commissioners of any county is hereby authorized, in its discretion, to expend any surplus funds, which may be available, for the erection and/or purchase of library buildings and equipment. (1949, c. 1222.)

Editor's Note.—Only the subsections affected or added by the amendments are set out.

§ 153-9.1. Contract for photographic recording of instruments and documents filed for record.—The board of county commissioners of any county in North Carolina is hereby authorized and empowered to contract for the photographic recording of any instruments or documents filed for record in the offices of the register of deeds, the clerk of the superior court and other county offices, and such recording shall constitute a sufficient recording, provided the original sizes of such instruments or documents are not reduced to less than two-thirds the original sizes; and provided further that no such contract shall be made for such photographic service, for a longer period than five years from the date of the commencement of such contracted service, except that the contract may contain a provision for automatic extensions for additional five year periods in the absence of a sixty day written notice by either party to contract, giving sixty days or more before the expiration of any five year period, terminating the contract at the end of such period. (1945, c. 286, s. 1.)

Cross References.—As to provision for photostatic copies of plats, etc., see § 47-32. As to prior provision for photographic or photostatic registration, see § 47-22. For subsequent provisions as to photographic reproduction of records, see §§ 153-15.1 to 153-15.6. As to photographic copies of business and public records as evidence, see §§ 8-45.1 to 8-45.4.

§ 153-9.2. Original instruments and documents constitute temporary recording; return to owners.

—The register of deeds of any county, where such photographic recording is contracted for, shall use the original instruments or documents as a temporary recording, and shall keep them in a temporary binder arranged in the chronological order of filing for record, assigning to each page a number which shall be arranged in a consecutive order, and shall, at all times, keep a temporary index thereto. When the photographic copies are substituted for the originals, the photographic copies shall be set up in a permanent binder and in the same order as to time and page numbers, as in the temporary binder, and permanently indexed. When the photographic copies are substituted for the originals, then the originals shall be returned to the persons entitled thereto, if known, but in no event, where return is to be made, no such return shall be delayed more than sixty days from the date of filing. The same procedure shall apply to the temporary and permanent records of the several classes of instruments or documents, such as wills, judgments, reports, and corporate charters, in the office of the clerk of the superior court of any such county, from and after such contract for photographic recording becomes effective. (1945, c. 286, s. 2.)

§ 153-9.3. Preservation and use of film or sensitized paper.—Wherever the contract for such photographic recording is for the initial photographing on film or sensitized paper, the board of county commissioners shall provide a fire resisting

vault space or lease lockbox space in which to permanently keep such film or sensitized paper, and to permit use of such film or sensitized paper from which to make copies, under such regulations as such board may prescribe. (1945, c. 286, s. 3; c. 944.)

§ 153-9.4. Removal of originals for photographing.—The official of any such county so contracting for photographic recording, who is in charge of any instruments or documents left with such official for recording, may permit temporary removal of the originals from the courthouse or other building for photographing, provided such originals are returned to such building within ten hours; provided further, that the board of county commissioners may when it appears necessary to complete the work, extend the time in which said photographing must be completed and returned to the courthouse of the county. (1945, c. 286, s. 4; c. 944.)

§ 153-9.5. Removal of public records for photographing.—The official of any county, who is in charge of any public records, may permit temporary removal of such records from the county courthouse or other building for the purpose of photographing a portion or all of such records, provided such records are returned within ten hours and provided, that the board of county commissioners may when it appears necessary to complete work, extend the time in which said photographing must be completed and returned to the courthouse of the county. (1945, c. 286, s. 5; c. 944.)

§ 153-9.6. Photographic recording of public records; preservation and use of film or sensitized paper.—The board of county commissioners of any county in North Carolina may also contract for the photographing on film or sensitized paper of any county records, and, if such contract is made, such board of county commissioners shall provide a fire resisting vault space or lease lockbox space in which to keep such film or sensitized paper, and shall have authority to permit copies to be made from such film or sensitized paper, under such regulations as such board may prescribe. (1945, c. 286, s. 6; c. 944.)

§ 153-9.7. Sections 153-9.1 to 153-9.7 confer additional powers.—Sections 153-9.1 to 153-9.7 shall not be construed as a limitation on the powers of the several boards of county commissioners; but shall be construed as an enabling act only and in addition to existing powers of such boards. (1945, c. 286, s. 7.)

§ 153-10. Local: authority to interdict certain shows.—The boards of commissioners of the several counties shall have power to direct the sheriff or tax collector of the county to refuse to issue any license to any carnival company and shows of like character, moving picture and vaudeville shows, museums and menageries, merry-go-rounds and ferris-wheels, and other like amusement enterprises conducted for profit under the same management and filing week-stand engagements or in giving week-stand exhibitions, whether under canvas or not, whenever in the opinion of the board of county commissioners the public welfare will be endangered by the licensing of such

companies. This section shall apply only to the counties of Anson, Bladen, Burke, Cabarrus, Carteret, Catawba, Duplin, Edgecombe, Forsyth, Greene, Haywood, Harnett, Iredell, Lee, Madison, Mitchell, Nash, Orange, Pamlico, Pasquotank, Polk, Randolph, Robeson, Scotland, Tyrrell, Washington, Wilkes, Wilson, Yadkin.

In Harnett County, the board of county commissioners shall have no authority to direct the sheriff or tax collector of said county to refuse to issue licenses to any of the amusement enterprises named in the first paragraph of this section when the same or any of them are operated, exhibited, or carried on in connection with any agricultural fair which has been approved by the commissioner of agriculture. (1919, c. 164; 1949, c. 111; 1951, cc. 809, 1071, 1174; C. S. 1298.)

Local Modification.—Harnett: 1951, c. 809.

Editor's Note.—The 1949 amendment inserted "Harnett" in the last sentence of the first paragraph.

The first 1951 amendment added the second paragraph, and the second and third 1951 amendments inserted "Edgecombe" and "Wilkes" in the last sentence of the first paragraph.

§ 153-13. Compensation of county commissioners.

Local Modification.—Alamance: 1951, c. 112; Cabarrus: 1945, c. 165; Cumberland: 1945, c. 315; Gaston: 1951, c. 115; Richmond: 1947, c. 235, s. 2; Scotland: 1947, c. 641.

Art. 2A. Photographic Reproduction of Records.

§ 153-15.1. Authority to acquire equipment, etc., for making reproductions; filing, docketing or recording of reproductions.—Any board of county commissioners in the State of North Carolina is hereby authorized and empowered to purchase, lease, rent, contract for or otherwise acquire the necessary equipment, supplies and service for the photocopying, photographing or microphotographing of instruments, documents, or papers filed for docketing or for record, or which have heretofore been filed, docketed, or recorded in the offices of the clerk of the superior court, the register of deeds, and all other county offices, and the filing, docketing, and recording of such public or official records of photocopying, photographing or microphotographing shall in all respects constitute sufficient filing, docketing and recording of same in the same manner as if such reproductions were originals. (1951, c. 19, s. 1.)

Cross Reference.—See also, §§ 153-9.1 to 153-9.7. As to photographic copies of business and public records as evidence, see §§ 8-45.1 to 8-45.4.

§ 153-15.2. Authority to cause reproductions to be made; reproducing material and device; preservation and use of film.—An official, person in charge of, or head of any office, or department, or board of any county government may, with the consent of the board of county commissioners, cause any or all papers, documents, books and records kept by such official person in charge of, or head of any department or board to be photocopied, photographed or microphotographed or reproduced on film or otherwise by the use only of such equipment or system as provided by the board of commissioners. Such film or reproducing material shall be of durable material, and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details. The board of commissioners shall provide

for the preservation of such films in conveniently accessible files or vaults, of fire resisting material, in order that the films may be permanently kept, and shall permit the use of such films from which to make copies, as provided by law under such regulations as the board may prescribe. (1951, c. 19, s. 2.)

§ 153-15.3. Reproductions to be deemed originals; facsimiles, etc.—Such photocopy, photograph, microphotograph or photographic film or reproduction of the original papers, documents, books and records kept and on file shall be deemed to be an original file or record for all purposes, and shall be admissible in evidence in all courts or administrative agencies of this State. A facsimile, photocopy, certified or exemplified copy thereof shall, for all purposes recited herein, be deemed to be a photocopy, certified or exemplified copy of the original papers or records as fully as if said papers had been typed or written in longhand in the records. (1951, c. 19, s. 3.)

§ 153-15.4. Disposition of originals.—Whenever an official person in charge of, or head of any office or department, or board of county government shall have photographed, photocopied, microphotographed, or otherwise reproduced all or any part of the papers on file or any records kept by said person in a manner and on film or other material that complies with the provisions of this article, and said reproductions are placed in conveniently accessible files and provisions made for preserving, examining and using same, as herein set out, and said official being of the opinion that said inactive papers, documents, books and records kept and on file in the office of the clerk of superior court, the register of deeds, or any of the county offices are consuming valuable space, and have no practical or historical value, may destroy or otherwise dispose of said original papers, documents, books and records upon a resolution being adopted by the board of county commissioners giving authority therefor, and when entered in the minutes of said board, and with the consent of the North Carolina State Department of Archives and History, or its successors; Provided, that said official person shall first furnish the State Department of Archives and History a complete description of the kind and type of papers, documents, books and public records intended to be destroyed or otherwise disposed of and turn over to the Department of Archives and History all or any of such papers, documents, books and records as the department may desire to preserve. In the event that the Department of Archives and History, or its successors, shall fail to notify said official person of any county government within 90 days after receiving an explanation of the kind and type of papers, documents, books and public records intended to be destroyed or otherwise disposed of, in respect to its action thereon, then such failure to notify said official person, shall in all respects be deemed a consent by the State Department of Archives and History for the destruction or other disposal of said papers, documents, books and public records. (1951, c. 19, s. 4.)

§ 153-15.5. Authority to execute contracts; joint use of facilities by two or more counties.—In order to provide for the services herein set

forth, the board of commissioners of any county may execute such contracts or agreements as in its opinion will promote efficiency and economy in the county government, in the carrying out of the purposes of this article. In order to make the benefits of this article available to the counties at the least possible expense, the several boards of county commissioners are hereby specifically authorized to contract between or among themselves for the use of any facilities or equipment provided by any board of county commissioners for use in the reproduction of records pursuant to this article, for the purpose of enabling two or more counties to utilize the same facilities and equipment; and in order to facilitate the joint use of such facilities and equipment any board of county commissioners is hereby authorized to remove from any of the several county offices any of the records intended to be reproduced pursuant to this article, and whenever necessary for such reproductions, to transport, under the direct control of an agent appointed by the board of county commissioners, any such records into any other county where such facilities and equipment are available; provided, that no such record so removed shall be kept out of the office of its regular legal custodian for a longer period than 24 hours at any one time, except under a formal resolution of the board of county commissioners of the county extending such period. (1951, c. 19, s. 5.)

§ 153-15.6. Duplicate sets or copies.—In order to further safeguard public records reproduced pursuant to this article, any board of county commissioners is hereby authorized to cause to be prepared duplicate sets or copies of any such reproductions and to contract for the storage and custody of such duplicate sets or copies in some safe and fireproof depository in a building separate and apart from that in which the original records or reproductions are kept. (1951, c. 19, s. 6.)

Local Modification.—Cabarrus: 1945, c. 165; Cumberland: 1945, c. 315; Richmond: 1947, c. 235, s. 2; Scotland: 1947, c. 641.

Art. 3. Forms of County Government. II. Manager Form.

§ 153-20. Manager appointed or designated.

Adjustment of Compensation.—Under this section adjustment of compensation is limited to such officer or agent as may be designated in lieu of naming a whole-time chairman or county manager, and the term "manager" is used to indicate powers and duties which may be conferred upon a whole-time chairman, other officer or agent who may be acting in lieu of a county manager. *Stansbury v. Guilford County*, 226 N. C. 41, 36 S. E. (2d) 719, 721.

Board of commissioners was without legal authority to increase the salary of plaintiff in excess of that expressly fixed by statute (Ch. 427, Public-Local Laws of 1927), although resolution recited that chairman was performing duties of whole-time chairman in lieu of county manager. *Id.*

§ 153-23. Compensation.

Quoted in *Stansbury v. Guilford County*, 226 N. C. 41, 36 S. E. (2d) 719.

Art. 4. State Association of County Commissioners.

§ 153-38. Dues and expenses of members.—There shall be assessed against each county an annual membership fee of five dollars, which shall be paid by the county treasurer upon the order of

the board of county commissioners, but the executive committee of the association may increase the annual membership fee to a sum not to exceed twenty-five dollars in counties having a population of forty thousand or over according to the last census; twenty dollars in counties having a population between thirty thousand and forty thousand according to said census, fifteen dollars in counties having a population between twenty thousand and thirty thousand according to the said census, and ten dollars in counties having a population less than twenty thousand according to said census. The various boards of commissioners are authorized to pay out of the county treasury the expenses of its members attending the meetings of the association. (1909, c. 870, ss. 5, 7; 1945, c. 327; C. S. 1307.)

Editor's Note.—Prior to the 1945 amendment the executive committee was only authorized to "increase the annual membership fee to a sum not to exceed ten dollars."

Art. 7. Courthouse and Jail Buildings.

§ 153-49.1. **Inspection of jails.**—(a) The state board of public welfare is hereby authorized and directed to consult regularly with an advisory committee of sheriffs and police officers regarding the personal safety, welfare, and care of the inmates incarcerated in county and municipal jails and city lock-ups, taking into account variations in the financial ability of cities and counties to maintain up-to-date facilities for prisoners. It shall be the duty of the state board of public welfare through its officers or agents to inspect periodically and regularly each and every county or district jail and all municipal jails or lock-ups in order to safeguard the welfare of the prisoners kept therein and in connection with said inspections to consult with the governing bodies of the local units.

(b) In the event that such inspections of jails and lock-ups disclose inadequate care or mistreatment of prisoners, or disclose that prisoners are being confined therein under conditions in violation of chapter 153, such findings shall be reported in writing to the governing body of the county or municipality concerned, which governing body shall at its next meeting fully consider the report and consult with the person making such report and findings and take such action with reference to the report and findings as may be found proper and necessary.

(c) In the event such governing body fails to take action to correct the conditions reported, it shall be the duty of the state board of public welfare to present such matters to the attention of the judge of the superior court presiding at the next criminal court in the county in which such jail or lock-up is located to the end that such superior court judge may direct the grand jury of such county to inspect the jail or lock-up described in such report, and present its findings and recommendations to the court at said term.

(d) If conditions in said jail or lock-up continue not to be corrected within a reasonable time after such notice to the grand jury, then the judge of the superior court in his discretion may require immediate compliance with the report of the grand jury. For such purpose the court may convene at any time and place within the judicial circuit in chambers or otherwise. The proceed-

ing shall be without jury and the hearings may be summarily or upon such notice as the court may prescribe.

(e) Pending a substantial compliance with the report and recommendations of the grand jury, the judge of the superior court shall have full power and authority under this section to refuse to allow prisoners to be placed in any jail or lock-up not deemed fit and may direct that any persons coming before him and being convicted of criminal offenses shall be confined only in a jail or lock-up that is deemed a proper place in which to confine prisoners. (1947, c. 915.)

Editor's Note.—The act inserting this section became effective on Jan. 1, 1948.

For a brief comment on this section, see 25 N. C. Law Rev. 401.

Art. 8. County Revenue.

§ 153-56. **Taxes collected by sheriff or tax collector.**

Local Modification.—Jackson: 1947, c. 17, s. 13.

§ 153-58. **Fines paid to treasurer for schools; annual report.**—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise shall be accounted for and paid to the county treasurer by the officials receiving them within thirty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the superintendent of public instruction on or before the first Monday in January, by the board of commissioners. (Rev., s. 1378; Const., Art. IX, s. 5; Code, ss. 724, 726; R. C., c. 28, s. 3; 1879, c. 96, ss. 2, 5; 1951, c. 785, s. 2; C. S. 1324.)

Editor's Note.—The 1951 amendment substituted "thirty" for "sixty" in line five.

§ 153-60. **County officers receiving funds to report annually.**

Local Modification.—Halifax: 1949, c. 389.

§ 153-64. **Demand before suit against municipality; complaint.**

Editor's Note.—As to notice of tort claims, see 27 N. C. Law Rev. 145.

Verification of Pleadings.—The requirement that when one pleading in a court of record is verified, every subsequent pleading in the same proceeding, except a demurrer "must be verified also," is one which may be waived, except in those cases where the form and substance of the verification is made an essential part of the pleading; as in an action for divorce in which a special form of affidavit is required, § 50-8, in a proceeding to restore a lost record, § 98-14, and in an action against a county or municipal corporation, § 153-64. *Calaway v. Harris*, 229 N. C. 117, 47 S. E. (2d) 796.

Cited in *Rivers v. Wilson*, 233 N. C. 272, 63 S. E. (2d) 544.

Art. 9. County Finance Act.

§ 153-69. **Short title.**

Editor's Note.—For act validating certain notes of counties evidencing refunded loans from the state literary fund and special building funds of North Carolina and authorizing the issuance of refunding bonds under this article, see Session Laws 1945, c. 404.

Purpose of Act.—

The legislature has prescribed in this article the machinery by which a county may issue lawful and valid obligations for public purposes and necessary expenses, and pledge its faith. *Jefferson Standard Life Ins. Co. v. Guilford County*, 225 N. C. 293, 34 S. E. (2d) 430.

Cited in *Waldrop v. Hodges*, 230 N. C. 370, 53 S. E. (2d) 263.

§ 153-77. Purposes for which bonds may be issued and taxes levied.

(a) Erection and purchase of schoolhouses, school garages, physical education and vocational education buildings, teacherages, lunchrooms, and other similar school plant facilities.

(d) Erection and purchase of hospitals; housing or quarters for public health departments or local public health departments; hospital facility as the term is defined in paragraph (c) of G. S. § 131-126.18.

(l) Acquisition and improvement of lands and the erection thereon of buildings to be used as a civic center or indoor or out of door stadium and as a living memorial to veterans of World War I and World War II.

(m) Erection and purchase of library buildings and equipment. (1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, s. 54; 1933, c. 259, s. 2; 1935, c. 302, s. 2; 1939, c. 231, s. 2(c); 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270.)

Local Modification.—Halifax: 1949, c. 371; Surry: 1947, c. 315.

Editor's Note.—The first 1947 amendment added paragraph (l) and the second 1947 amendment rewrote paragraph (a). The first and third 1949 amendments added subsection (m), and the second 1949 amendment added that part of subsection (d) beginning with the word "housing" in line one. As the rest of the section was not affected by the amendments it is not set out.

For comment on the 1947 amendments, see 25 N. C. Law Rev. 462.

A bond order under § 153-78 must set forth one of the purposes enumerated in this section. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484.

Erection of Consolidated School Instead of Remodeling Old School.—Where a bond issue for the remodeling of the old school buildings in a county administrative unit was duly approved by the voters in an election, it was held that the board of county commissioners had the legal authority to allocate funds from this bond issue to the erection of a proposed consolidated high school since this was not a change which involved any change of purpose for which the bonds were issued but was only a change in the manner or method of accomplishing the original purpose. Feezor v. Sicheloff, 232 N. C. 563, 61 S. E. (2d) 714.

Use of Funds for Hospital "Buildings."—Where the resolution of the county commissioners in submitting to a vote the question of issuing bonds for a public hospital uses the word "buildings," and it is later found that a surplus will remain after the erection and equipment of the main hospital building, such surplus may be used for the purpose of erecting on the hospital grounds a home for nurses, technicians and others engaged in essential employment incidental to the proper operation of the hospital. Worley v. Johnston County, 231 N. C. 592, 58 S. E. (2d) 99.

§ 153-78. Order of governing body required.

2. If the issuance of the bonds is required by the constitution to be approved by the voters, or if the governing body, although not required to obtain the approval of the voters before issuing the bonds, deems it advisable to obtain such approval, that the order shall take effect when approved by the voters of the county at an election as provided in this article; or

(1949, c. 497, s. 1.)

Editor's Note.—The 1949 amendment, effective March 22, 1949, rewrote clause 2 of subsection (e). As the rest of the section was not changed, only such clause is set out. See note under § 153-92.

A bond order may contain several sections and authorize the issue of bonds for different purposes, and § 153-77 sets out eleven (now twelve) different purposes for which bonds may be issued. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484.

It Must Set Forth One of Purposes Enumerated in § 153-77.—A bond order under this section must set forth one of the purposes enumerated in § 153-77, but it is not required that it set out in detail the estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation

of the proceeds of the bonds under § 153-107, provided the use of the funds falls within the general purpose designated. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484.

Board of Commissioners May Reallocate Proceeds of Bonds.—A bond order issued under § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months school term within the municipal administrative unit. It was held that § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of the bonds to different projects upon its further finding, after investigation provided for in § 115-83, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484.

§ 153-87. Hearing; passage of order; debt limitations.

Local Modification.—Carteret: 1947, c. 32; Craven: 1947, c. 161, effective until Jan. 1, 1949.

§ 153-90. Limitation of action to set aside order.

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263.

§ 153-92. What majority required.—If a bond order provides that it shall take effect when approved by the voters of the county, the affirmative vote of a majority of those who shall vote on the bond order shall be required to make it operative. (1927, c. 81, s. 22; 1949, c. 497, s. 2.)

Editor's Note.—The 1949 amendment, effective March 22, 1949, rewrote this section. Section 7 of the amendatory act made it retroactive as to elections held subsequent to November 24, 1948.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 454.

Construction of New School Building.—The vote on the question of issuance of bonds by a county for the construction of a new school building, a necessary expense, is not against the registration, and a favorable vote of the majority of those voting in the election is sufficient to validate the bond resolution and authorize the issuance and sale of the proposed bonds. Mason v. Moore County Board of Com'rs, 229 N. C. 626, 51 S. E. (2d) 6.

§ 153-92.1. General application of provision as to majority vote.—All provisions of public, public-local, private and special acts relating to counties, municipalities, school districts, or other political subdivisions in the state which require that a proposition for the issuance of bonds or levy of taxes of any such county, municipality, school district or other political subdivisions, or that any other proposition be approved by the vote of a majority of the registered voters of such county, municipality, school district or other political subdivision, are hereby amended so as to require that the same be approved by a majority of the qualified voters who shall vote on any such proposition. The provisions of this section shall be applicable to every such election held subsequent to March 22, 1949, notwithstanding the fact that any procedures or acts or actions required or permitted by statute were taken or had with respect to any such election prior to such date. (1949, c. 497, s. 8.)

Cross Reference.—For similar provision relating to school districts, see § 115-15.1.

Cited in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696.

§ 153-100. Limitation as to actions upon elections.

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263.

§ 153-102. Within what time bonds issued.

Notwithstanding the foregoing limitations of time which might otherwise prevent the issuance

of bonds, bonds authorized by an order which took effect prior to July 1st, 1950, and which have not been issued by July 1st, 1951, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1953, unless such order shall have been repealed, and any loans made under authority of § 153-108 of this article in anticipation of the receipt of the proceeds of the sale of such bonds, or any renewals thereof, may be paid on or at any time prior to but not later than June 30th, 1953, notwithstanding the limitation of time for payment of such loans as contained in said section. (1927, c. 81, s. 32; 1939, c. 231, s. 2(d); 1947, c. 510, s. 1; 1949, c. 190, s. 1; 1951, c. 439, s. 1.)

The 1947 amendment added the above paragraph at the end of this section, and the 1949 and 1951 amendments changed the dates therein. As the rest of the section was not affected by the amendments it is not set out.

For a brief comment on the 1947 amendment, see 25 N. C. Law Rev. 453.

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263.

§ 153-103. Bonded debt payable in installments.—The bonds authorized by a bond order, or by two or more bond orders if the bonds so authorized shall be consolidated into a single issue, may be issued either all at one time as a single issue or from time to time in series and different provisions may be made for different series. The bonds of each issue or of each series shall mature in annual installments, the first of which installments shall be made payable not more than three years after the date of the bonds of such issue or of such series, and the last within the period determined and declared pursuant to § 153-80. If the bonds so authorized shall be issued at one time as a single issue, no such installment shall be more than two and one-half times as great in amount as the smallest prior installment of such issue. If the bonds so authorized shall be issued in series, the total amount outstanding after the issuance of any particular series shall mature so that the total amount of such bonds maturing in any fiscal year shall not be more than two and one-half times as great in amount as the smallest amount of such outstanding bonds which mature in any prior fiscal year, and the first installment of the bonds of any series subsequent to the first series may mature more than three years after the date of the bonds of the first series. This section shall not apply to funding or refunding bonds. (1927, c. 81, s. 33; 1931, c. 60, s. 57; 1933, c. 259, s. 2; 1951, c. 440, s. 3.)

Editor's Note.—

The 1951 amendment rewrote this section.

The 1951 amendatory act, effective March 28, 1951, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

§ 153-107. Application of funds.

Right to Transfer and Allocate Funds.—This section does not place a limitation upon the legal right to transfer or allocate funds from one project to another included within the general purpose for which bonds were issued. The inhibition contained in the statute is to prevent funds obtained for one general purpose being transferred and used for another general purpose. For example, the statute prohibits the use of funds derived from the sale of bonds to erect, repair and equip school buildings, from being used to erect or repair a courthouse or a county home, or similar project. This view is in accord with the provisions of § 159-49.1. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484.

Effect of Bond Order.—A bond order under § 153-78 must set forth one of the purposes enumerated in § 153-77, but it is not required that it set out in detail the estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation of the proceeds of the bonds under this section, provided the use of the funds falls within the general purpose designated. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484.

Art. 10. County Fiscal Control.

§ 153-114. Title; definitions.

Local Modification.—Foryth: 1945, c. 87.

Accumulation of Surplus School Sinking Fund Not Authorized.—The law does not contemplate or authorize the accumulation of a surplus school sinking fund and the exemption of such surplus from the salutary provisions of the "County Fiscal Control Act." Johnson v. Morrow, 228 N. C. 58, 61, 44 S. E. (2d) 468.

The board of county commissioners may amend or clarify their records to make them speak the truth in order to list separately tax levies for general and special purposes as required by this section, and while this power exists only to make bona fide corrections, nothing else appearing, resolutions amending the records will be assumed to be what they purport to be, and not original actions. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371.

Quoted in Coe v. Surry County, 226 N. C. 125, 36 S. E. (2d) 910.

§ 153-115. County accountant.

Local Modification.—Jackson: 1947, c. 17, s. 13.

Art. 10A. Capital Reserve Funds.

§ 153-142.1 Short title.

For comment on this enactment, see 21 N. C. Law Rev. 357.

§ 153-142.4. Sources of capital reserve fund.—

The capital reserve fund may consist of moneys derived from any one or more of the following sources:

(1945, c. 464, s. 2.)

Editor's Note.—The 1945 amendment deleted from the latter part of the preliminary paragraph the words "except that no money shall be deposited in such capital reserve fund after July tenth, one thousand nine hundred forty-five." As the rest of the section was not affected by the amendment it is not set out.

§ 153-142.6. When the capital reserve fund shall be deemed established.—The capital reserve fund shall be deemed established when the order passed under the provisions of § 153-142.5 is approved by the local government commission. After action is taken upon the provisions of said order by the local government commission the secretary of said commission shall notify the clerk in writing of the approval by said commission or disapproval, if the commission declines to approve the order, and the reasons therefor. Upon receipt of the notice of such approval the clerk shall thereupon notify the financial officer of the county who shall immediately deposit in the designated depository the moneys stated as available in said order for the capital reserve fund and simultaneously report said deposit to the local government commission. (1943, c. 593, s. 6; 1945, c. 464, s. 2.)

Editor's Note.—The 1945 amendment struck out the former provision relating to the duty of the financial officer to make deposits and report same to the local government commission.

§ 153-142.6½. Increases to capital reserve fund.

—No increase to a capital reserve fund shall be made except by resolution adopted by the governing body and the provisions thereof approved by the local government commission, which resolu-

tion shall state the source or sources of moneys from which such increase is intended to be made and the amount of the money from each such source, but each increase shall be from moneys derived from the identical source or sources as those stated in the order establishing the capital reserve fund or in an amendment thereto. The clerk shall transmit a certified copy of such resolution to the local government commission. After action is taken upon the provisions of said resolution by the local government commission the secretary of such commission shall notify the clerk in writing of the approval by said commission or disapproval, if the commission declines to approve the resolution, and the reasons therefor. Upon receipt of the notice of approval the clerk shall thereupon notify the financial officer of the county who shall immediately deposit in the duly designated depository the moneys stated in said resolution and simultaneously report such deposit to the local government commission. Deposits required in § 153-142.18 shall not be construed as increases of a capital reserve fund within the meaning of this section. (1945, c. 464, s. 2.)

§ 153-142.9. Purposes for which a capital reserve fund may be used.

(d) Investment in bonds, notes or certificates of indebtedness of the United States of America, in bonds or notes of the state of North Carolina, or in bonds of the county.

(f) When the order authorizing and establishing a capital reserve fund contains, as provided in clause (1) (a) of § 153-142.4, collections of ad valorem taxes levied for a special purpose, such special purpose. (1943, c. 593, s. 9; 1945, c. 464, s. 2; 1949, c. 196, s. 1.)

Editor's Note.—The 1945 amendment made clause (d) applicable to certificates of indebtedness. The 1949 amendment added clause (f). As the rest of the section was not affected by the amendments it is not set out.

§ 153-142.10. Restrictions upon use of the capital reserve fund.—No part of the capital reserve fund consisting of collections of ad valorem taxes levied for a special purpose within the meaning of the constitution of North Carolina shall be withdrawn and expended for any purpose except that for which such taxes were levied, but such collections may be used for either of the purposes stated in clauses (b), (d) and (f) of § 153-142.9, except that collections of taxes levied for debt service may be expended for either of the purposes stated in clauses (c) and (e) of said § 153-142.9. Upon written petition of the county board of education to the governing body requesting that any moneys deposited in the capital reserve fund, which prior to such deposit had been in the custody or control of the county board of education, be withdrawn and turned over to the county board of education for expenditure for the purposes stated in subclauses (1) and/or (9) of clause (a) of § 153-142.9, it shall be the duty of the governing body and other officers of the county to do all things necessary within the provisions of law to perfect such withdrawal and such moneys so withdrawn shall be deemed necessary for expenditure by the county as an administrative agency of the state for maintenance of the six months school term required by the constitution of North Carolina. (1943, c. 593, s. 10; 1945, c. 464, s. 2; 1949, c. 196, s. 2.)

Editor's Note.—The 1945 amendment rewrote the second sentence.

The 1949 amendment inserted the reference to clause (f) in line eight.

§ 153-142.11. Authorization of withdrawal from the capital reserve fund.—A withdrawal for any one of the purposes contained in clauses (b), (c), (d), (e) and (f) of § 153-142.9 shall be authorized by resolution duly adopted by the governing body. Each such resolution shall specify the purpose of the withdrawal, the amount of such withdrawal, the sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source. Each such resolution shall contain a request to the local government commission for its approval of the provisions thereof, shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy of such resolution to the local government commission. A resolution authorizing a withdrawal for the purpose stated in clause (b) of § 153-142.9 shall further specify the total appropriations contained in the annual appropriation resolution of the fiscal year in which such withdrawal is authorized and shall state the total amount of such withdrawals previously made in such fiscal year and the date upon which the withdrawal shall be repayable to the capital reserve fund. In any case where all or any part of the capital reserve fund has been withdrawn and invested in bonds, notes or certificates of indebtedness of the United States of America which are about to mature and it is desired to continue investment of like kind, such continuance may be effected by exchange of said maturing bonds, notes or certificates of indebtedness through the Treasury of the United States, or an authorized agent thereof, for bonds, notes or certificates of indebtedness of the United States of America of like principal amount and of later maturity or maturities: Provided, however each such continuance and exchange shall first be authorized by resolution adopted by the governing body and the provisions thereof approved by the local government commission.

(1945, c. 464, s. 2; 1949, c. 196, s. 3.)

Editor's Note.—The 1945 amendment added the last sentence to the first paragraph, and the 1949 amendment inserted the reference to clause (f) near the beginning of the paragraph. As the rest of the section was not affected by the amendments it is not set out.

§ 153-142.16. How a withdrawal may be made.

—No withdrawal from the capital reserve fund shall be made except pursuant to authority of the governing body by resolution or order which has taken effect. Each withdrawal shall be for the full amount authorized, except a withdrawal for the purpose stated in clause (e) of § 153-142.9 which may be made for all or a part thereof from time to time according to the plan of amortization, and shall be by check drawn on the depository signed by the financial officer of the county and payable to said financial officer, except that a check evidencing withdrawal for the purpose of investment may be made payable to the obligor or to the vendor of such bonds, notes or certificates of indebtedness in which investment has been duly authorized. Each such check shall bear a certificate on the face or reverse thereof signed by the secretary of the local government commission or by his duly designated assistant

that the withdrawal evidenced thereby has been approved under the provision of the county capital reserve act of one thousand nine hundred and forty-three, and such certificate shall be conclusive evidence that such withdrawal has been approved by the local government commission: Provided, however, the state of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such certificate. (1943, c. 593, s. 16; 1945, c. 464, s. 2.)

Editor's Note.—The 1945 amendment added the exception clause to the second sentence.

§ 153-142.18. Certain deposits mandatory.

All deposits required in this section shall be made in the duly designated depository of the capital reserve fund and it shall be the duty of the financial officer to simultaneously report each such deposit to the local government commission. (1943, c. 593, s. 18; 1945, c. 464, s. 2.)

Editor's Note.—The 1945 amendment added the above paragraph to this section. As the rest of the section was not affected by the amendment it is not set out.

§ 153-142.21. Termination of power to establish or increase a capital reserve fund.—No order establishing a capital reserve fund, or amendment thereto for including additional sources, shall be passed nor shall a resolution providing for increase of a capital reserve fund be adopted after July tenth, one thousand nine hundred forty-seven. (1945, c. 464, s. 2.)

Validation of Former Increase.—Session Laws 1945, c. 464, s. 3, provides: "Any increase heretofore made to a capital reserve fund with money from the same source or sources stated in the ordinance or order establishing said fund in accordance with the provisions of either the Municipal Capital Reserve Act of one thousand nine hundred forty-three or the County Capital Reserve Act of one thousand nine hundred forty-three, or stated in an amendment to said ordinance or order, is hereby validated."

Art. 13. County Poor.

§ 153-152. Support of poor; superintendent of county home; paupers removing to county; hospital treatment.—The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well-ordering. They may employ biennially some competent person as superintendent of the county home for the aged and infirm, and may remove him for cause. They may institute proceedings against any person coming into the county who is likely to become chargeable thereto, and cause his removal to the county where he was last legally settled; and they may recover from such county by action all charges and expenses incurred for the maintenance or removal of such poor person. The board of county commissioners of each county is hereby authorized to levy, impose and collect special taxes upon all taxable property, not to exceed five cents on the one hundred dollars valuation, required for the special and necessary purposes set forth above in addition to any taxes authorized by any other special or general act and in addition to the constitutional limit of taxes levied for general county purposes, it being the purpose of the general assembly hereby to give its approval for the levy of such special taxes for such necessary purposes.

This paragraph shall not apply to the counties of Ashe, Avery, Bertie, Buncombe, Clay, Columbus, Cumberland, Currituck, Durham, Edgecombe, Forsyth, Gaston, Gates, Guilford, Halifax, Henderson, Iredell, Jackson, Johnston, Lee, McDowell, Macon, Mecklenburg, Moore, New Hanover, Pasquotank, Pitt, Richmond, Robeson, Rockingham, Rowan, Stanley, Surry, Transylvania, Union, Vance, Warren, Washington, Wilkes, Yadkin and Yancey. (Rev., s. 1327; Code, s. 3540; 1891, c. 138; 1935, c. 65; 1945, c. 151; c. 562, s. 1; 1947, cc. 160, 672; 1951, cc. 734, 790; C. S. 1335.)

Cross Reference.—

As to conflict between this section and other laws, see notes to § 153-9, subsection 6.

Editor's Note.—

The second 1945 amendment added the last sentence of the first paragraph. And the first 1945 amendment struck out "Chowan" from the list of counties appearing in the last sentence of the second paragraph. The 1947 amendments struck out "Sampson" and "Haywood" from such list. The first 1951 amendment (c. 734) struck out "Nash" from the list and the second 1951 amendment (c. 790) struck out Brunswick. As the rest of said paragraph was not affected by the amendment it is not set out.

Cited in *Atlantic Coast Line R. Co. v. Beaufort County*, 224 N. C. 115, 29 S. E. (2d) 201.

§ 153-156. Property of indigent to be sold or rented.

The three-year statute of limitations applies to an action brought by a county against an inmate of county home to secure reimbursement or indemnity for sums expended for her upkeep in the home. *Guilford County v. Hampton*, 224 N. C. 817, 32 S. E. (2d) 606.

§ 153-159. Legal settlements; how acquired.

When Domicile and Settlement Different.—

The word "as" in the third line in original should be "and".

§ 153-160. Removal of indigent to county of settlement; maintenance; penalties.

Nothing contained herein shall be construed to prevent any county from rendering assistance to needy persons living within the county even though such persons may not have lived in the county for the length of time required to establish legal settlement and if such needy persons are eligible for old age assistance, aid to dependent children or any type of general assistance in which state and federal funds are involved, assistance may be granted, provided funds are available (Rev., s. 1334; Code, s. 3545; R. C., c. 86, s. 13; 1777, c. 117, s. 17; 1834, c. 21; 1945, c. 562, s. 2; C. S. 1343.)

Editor's Note.—The 1945 amendment added the above sentence at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Art. 15. County Prisoners.

§ 153-179. Jailer to cleanse jail, furnish food and water.

Action for Wrongful Death.—This section is not applicable in an action against a municipality for wrongful death allegedly caused by the chief of police and jailer. *Gentry v. Hot Springs*, 227 N. C. 665, 44 S. E. (2d) 85.

§ 153-180. Fees of jailers.

Local Modification.—Avery: 1947, c. 409; Caldwell: 1951, c. 412; Davie: 1951, c. 627; Guilford: 1947, c. 78, s. 1; McDowell: 1949, c. 325; 1951, c. 830; Randolph: 1951, c. 133, s. 6; Scotland: 1949, c. 80; Wake: 1951, c. 867; Yadkin: 1951, cc. 298, 1173.

§ 153-183. United States prisoners to be kept.

Local Modification.—Guilford: 1947, c. 78, s. 2.

Chapter 154. County Surveyor.

§ 154-2. [Repealed.]

§ 154-2: Repealed by Session Laws 1951, c. 21.

Chapter 155. County Treasurer.

§ 155-1. Election of county treasurer.

Local Modification.—Cumberland: 1947, c. 702.

§ 155-18. Officers failing to account to treasurer sued by commissioners.

Cited in *Johnson v. Marrow*, 228 N. C. 58, 44 S. E. (2d) 468.

Chapter 156. Drainage.

Art. 7A. Maintenance.

Sec.

156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations.

Art. 8. Assessments and Bond Issue.

156-124.1. Assessments for repair, etc., of canals; notice and publication; exceptions to report.

Art. 11. General Provisions.

156-135.1. Investment of surplus funds.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Art. 1. Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Name of proceeding.

Statutes Provide Flexible Procedure.—The statutes authorizing the creation, maintenance and improvements of drainage districts provide flexible procedure which may be modified and molded by decrees from time to time to promote the beneficial objects sought by the creation of the district, subject to the restrictions that there should be no material change nor any change that would impose additional costs upon landowners except to the extent of benefits to them. In re *Lyon Swamp Drainage, etc.*, Dist., 228 N. C. 248, 45 S. E. (2d) 130.

Commissioners May Issue Bonds and Make Assessments Applicable Only to Section Benefited.—Where proposed improvements and repairs will primarily benefit lands embraced in one section of a drainage district and would be of no substantial benefit to landowners in another section thereof, the drainage commissioners have power under statutory authority to issue bonds and make assessments applicable only to the section benefited. In re *Lyon Swamp Drainage, etc.*, Dist., 228 N. C. 248, 45 S. E. (2d) 130.

The correct procedure to secure additional authority for proper maintenance and improvements in a drainage district is by motion or petition in the original cause. In re *Lyon Swamp Drainage, etc.*, Dist., 228 N. C. 248, 45 S. E. (2d) 130.

Stated in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

§ 156-2. Petition filed; commissioners appointed.

Quoted in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

Cited in *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

§ 156-3. Duty of commissioners.

Stated in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

Cited in *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

§ 156-4. Report and confirmation; easement acquired; exceptions.

Quoted in *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

Stated in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

§ 156-10. Right to drain into canal.

Adjudication of Rights of Parties.—In a proceeding by drainage corporation to levy assessments against the lands of respondents for the proportionate part of the expense for making necessary improvements upon allegations that such lands drained into the corporations' canals and would be greatly benefited by the improvements, it appeared that respondents' predecessor in title cut a large canal through his lands draining into the lands of the corporation. It was held that it would be presumed that respondents' predecessor in title acquired the right to cut into the canal of plaintiff pursuant to the provisions of this section and the petition should be considered as a motion in that cause for the proper adjudication of the rights of the parties. *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

Cited in *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

§ 156-11. Expense of repairs apportioned.

Quoted in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

§ 156-12. Notice of making repairs.

Stated in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

§ 156-13. Judgment against owner in default; lien.

Quoted in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

§ 156-14. Subsequent owners bound.

Quoted in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

SUBCHAPTER II. DRAINAGE BY CORPORATION.

Art. 3. Manner of Organization.

§ 156-37. Petition filed in superior court.

Evidence Insufficient to Show Establishment of Drainage Corporation.—Where petitioners show only the granting of an easement in response to a petition by an individual to be allowed to drain into an existing canal on the lands of another under the provisions of §§ 156-2, 156-3 and 156-10, such evidence is insufficient to show the establishment of a drainage corporation under the provisions of this section. In re *Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

Burden of Proof Where Drainage Assessment Challenged.—When the validity of a drainage assessment is challenged the burden is upon the drainage district or corporation to show that it was created in substantial compliance with the applicable statutes and that the assessments were levied pursuant to and in compliance with the statutory provisions. In re *Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

Stated in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

§ 156-38. Commissioners appointed; report required.

Cited in *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

§ 156-40. Confirmation of report.

Prerequisites to Establishment of Drainage Corporation.—In order to establish a drainage corporation it is necessary that a petition in conformity with § 156-37 be filed and that commissioners be appointed and that they file a report in conformity with § 156-38 and that there be an adjudication and confirmation of the report. It is only after such confirmation that the corporation may be declared to exist and may proceed to organize and levy assessments. *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

Quoted in *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

§ 156-41. Proprietors become a corporation.

Cited in *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

§ 156-42. Organization; corporate name, officers and powers.

Cited in *In re Atkinson-Clark Canal Co.*, 231 N. C. 131, 56 S. E. (2d) 442.

§ 156-43. Incorporation of canal already constructed; commissioners; reports.

Assessment Can Be Levied Only on Property Benefited.—The general rule is well settled that a special assessment for a purpose of drainage can be levied only upon property benefited by the improvement. It is said that the legal theory underlying drainage assessments is one of benefit increasing the value of the land and justifying its assessment. *In re Westover Canal*, 230 N. C. 91, 52 S. E. (2d) 225.

Where it clearly appears that the canal will neither drain a particular tract of land nor render it more accessible, there is no valid reason for including it in the district, and if it is nevertheless arbitrarily made a part thereof, the owner may obtain relief. *Id.*

The statutory provisions determine the property liable to drainage assessment. Hence to constitute a valid assessment the particular land against which it is levied must come within the meaning of this section. *In re Westover Canal*, 230 N. C. 91, 52 S. E. (2d) 225.

"Land Tributary to the Canal."—As here used the phrases "land tributary thereto" and "land tributary to the canal" mean land from which water drains or flows into the canal. *In re Westover Canal*, 230 N. C. 91, 52 S. E. (2d) 225.

Burden of Proof on Appeal.—This section gives to any person dissatisfied with an assessment the right to appeal to a jury at a regular term of the superior court of the county. In such event, it would seem that the authority undertaking to establish the assessment would still have the burden of proving the provisions of the statute essential to the creation of a valid assessment. It may be that the order of the clerk of the superior court approving and confirming the assessment as proposed by the commissioners and the board of directors of the corporation creates a *prima facie* case. But a *prima facie* case, or *prima facie* evidence, does not change the burden of proof. *In re Westover Canal*, 230 N. C. 91, 52 S. E. (2d) 225.

In order to constitute a valid drainage assessment it is necessary that the land assessed drain or flow into the canal, and therefore on appeal to the superior court on a landowner's exceptions to the order of the clerk confirming assessments as proposed by the commissioners, the drainage district has the burden of proving the number of acres of land the exceptor owns which drain into the canal and what amount said land should be assessed per acre. The fact that exceptor first introduced evidence, presumably on the theory that the order of the clerk made out a *prima facie* case, does not alter the rule as to the burden of proof. *Id.*

Art. 4. Rights and Liabilities in the Corporation.

§ 156-44. Shares of stock annexed to land.

Stated in *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

§ 156-51. Penalty for nonpayment of assessments.

Applicability of Section.—The provisions of this section providing for a penalty for nonpayment of assessments relate only to the remedy available where incorporators fail

and refuse to pay assessments duly levied. *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

In a proceeding by drainage corporations to have lands of respondents assessed for improvements upon allegations that respondents are not members of the corporation but that nevertheless their lands drain into the canals and would be materially benefited by the improvements, it was held that respondents' contention that the sole remedy of petitioners is under the provisions of this section to construct dams to prevent water draining from respondents' lands into the canals is untenable, since the provisions of this section are inapplicable to such proceeding, being applicable solely as a remedy where incorporators fail and refuse to pay assessments duly levied. *Sawyer Canal Co. v. Keys*, 232 N. C. 664, 62 S. E. (2d) 67.

SUBCHAPTER III. DRAINAGE DISTRICTS.

Art. 5. Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

For act relating to Scuppernong Drainage District in Washington County, see Session Laws 1947, c. 934.

Art. 6. Drainage Commissioners.

§ 156-79. Election and organization under original act.

Any vacancy thereafter occurring shall be filled by the clerk of the superior court.

(1947, c. 273.)

Editor's Note.—The 1947 amendment, effective March 11, 1947, and applicable to proceedings then pending before superior court clerks, substituted in the fifth sentence the words "by the clerk of the superior court" for the words "in like manner." As only this sentence was changed the rest of the section is not set out.

§ 156-81. Election and organization under amended act.—1. Method of Election.—In the election of drainage commissioners by the owners of land, each landowner shall be entitled to cast the number of votes equaling the number of acres of land owned by him and benefited, as appears by the final report of the viewers. Each landowner may vote for the names of three persons for commissioners. If any person or persons in any district shall own land in any district containing an area greater than one-half of the total area in the district, such owner shall only be permitted to elect two of the drainage commissioners, and a separate election shall be held under the direction of the clerk by the minority landowners, who shall elect one member of the drainage commissioners.

In lieu of the above method of election of drainage commissioners, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and such drainage commissioners so appointed by the clerk shall have the same authority as if they had been elected by the method above described.

7. Compensation.—The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed five dollars (\$5.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of

drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

8. Application of Section.—The provisions of this section shall apply to all drainage districts now or hereafter existing in this state, without regard to the date of organization, whether before or after April 14, 1949.

9. Appointment by Clerk of Superior Court as Alternative to Election.—In lieu of the methods of election and filling of vacancies in the position of drainage commissioner as provided in § 156-79 and this section, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and fill such vacancies, and such drainage commissioners so appointed by the clerk shall have the same authority and responsibility as if they had been elected or appointed as provided under § 156-79 or this section. (1917, c. 152, s. 5; 1919, cc. 109, 217; 1947, c. 935; 1949, c. 956, ss. 1-3; C. S. 5339.)

Editor's Note.—The 1947 amendment added the second paragraph of subsection 1. The 1949 amendment rewrote subsections 7 and 8 and added subsection 9. As subsections 2 through 6 were not affected by the amendments they are not set out.

Art. 7. Construction of Improvement.

§ 156-88. Drainage across public or private ways.—Where any public ditch, drain or watercourse established under the provisions of this subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the state highway and public works commission the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the commission, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the commission shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the commission and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the supreme court, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the commission is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the commission for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the commission.

Where any public ditch, drain, or watercourse

established under the provisions of this subchapter crosses a public highway or road, not under the supervision of the state highway and public works commission, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the state highway and public works commission, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board of authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private road; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the state highway and public works commission or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; 1947, c. 1022; C. S. 5345.)

Editor's Note.—The 1947 amendment inserted the first two paragraphs and made changes in the third paragraph. The word "of" in the next to last line of the third paragraph should probably read "or".

§ 156-92. Control and repairs by drainage commissioners.—Whenever any improvement constructed under this subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the maintenance or repair of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or watercourse in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or

other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this subchapter, and any person causing such injury shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; 1947, c. 982, s. 1; C. S. 5349.)

The 1947 amendment substituted "maintenance or repair" for "construction" in line eight.

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742.

Art. 7A. Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations.—(1) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of commissioners and shall not exceed an average of one dollar (\$1.00) per acre per year and the amount of these assessments shall be approved by the clerk of the superior court prior to their annual levy. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the district as approved by the clerk of the superior court.

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work.

(2) The board of drainage commissioners of a drainage district may join with the commissioners of one or more districts for the purpose of employing engineering assistance, equipment, superintendents and equipment operators for the maintenance of the canals in the several districts desiring to coordinate their maintenance operations and the drainage districts desiring to coordinate a common maintenance force may have a common office with the necessary employees for the furtherance of the joint operations for maintenance. The districts may coordinate their work without regard to county lines.

(3) The board of commissioners of a drainage district may, individually or jointly with the commissioners of other drainage districts, purchase, lease, rent, sell, or otherwise dispose of at public or private sale, equipment for the original construction or maintenance of the canals in the individual or joint districts or the said drainage districts may make contracts with private construction firms for the maintenance and construction of their canals. Contracts made with private

construction companies are to be advertised as provided for the contract for the original construction of the canals.

The drainage districts may use the equipment owned by them for the purpose of maintenance of the canals and the construction of extensions to the system of canals in the individual or several drainage districts.

(4) The drainage districts desiring to consolidate their maintenance services and equipment may set up a board composed of one member from each district for the purpose of control and use of the personnel and equipment employed on a joint basis, and in all matters coming before the joint board, the representative of each district shall have a voting strength equal to the proportionate acreage of his drainage district as compared with the total acreage of the combined districts.

(5) The collection of the annual maintenance assessments shall be made by the county tax collector. The board of county commissioners of the county in which a drainage district is located shall upon the request of the board of drainage commissioners of the said district cause to be shown on the tax statement or notice issued by the county to its taxpayers the amount due the drainage district by the landowners in the same manner as other special assessments are shown thereon. This amount shall be collected by the county tax collector in the same manner as county taxes and deposited to the credit of the district in which the land is located. (1949, c. 1216.)

Art. 8. Assessments and Bond Issue.

§ 156-98. Form of bonds; excess assessment.

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742.

§ 156-103. Assessment rolls prepared.

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742.

§ 156-116. Modification of assessments.

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742.

§ 156-120. Disallowance of petition; order; reclassification of lands; map and profile.—If the board of viewers do not favor the bond issue, it would be the duty of the clerk not to allow the same, but the petition may be presented again at any time after six months. If the board of viewers report that a bond issue is preferable, the clerk shall order the board of viewers to make a profile as is required when the district is first formed. If, in the opinion of the board of drainage commissioners, a new property map of the district should accompany the profiles, the clerk shall order the board of viewers to make such new map, showing the present owners in the district or in that portion thereof to be benefited by the proposed repairs, maintenance or improvement. The board of viewers shall with their profile or profiles file a report showing the lands to be benefited by the proposed repairs or maintenance or other improvements, the estimated costs thereof and the proportion or percentage which each tract of land shall bear for such repair, maintenance or improvement. Only those lands benefited by the proposed expenditures for repair, maintenance or improvement shall be assessed, and the assessment so made shall be in propor-

tion to the benefits to be derived therefrom. The property maps, profiles and estimates of costs of repair, maintenance or improvement and lands benefited and benefits received shall be filed with the clerk in the time and manner prescribed for the filing of such reports when the district is first created. (1923, c. 231, s. 3; 1947, c. 982, s. 2; C. S. 5373(c).)

Editor's Note.—The 1947 amendment repealed the former section and substituted the above section therefor.

§ 156-124.1. Assessments for repair, etc., of canals; notice and publication; exceptions to report.—All assessments for repair, maintenance or enlargement or other improvements of any canal or canals in any drainage district shall be levied against the lands benefited by such repair, enlargement or improvement. The drainage commissioners shall give notice of the proposed assessments by publication at least once a week for a period of four weeks in some newspaper published in the county in which said district was created, or if there be no such newspaper, by posting a notice at the courthouse door in said county for thirty days. Any property owner may within said thirty-day period file exceptions to said report, whereupon the clerk shall fix a time for the hearing of all exceptions which may be filed, and at said time the clerk shall hear said exceptions and render such judgment as may be meet and

proper. Any property owner not having excepted to the proposed assessment within the time herein provided for shall be concluded and bound by the assessment as proposed. (1947, c. 982, s. 3.)

Art. 11. General Provisions.

§ 156-135.1. Investment of surplus funds.—Any drainage district organized under the provisions of subchapter III of Chapter 156 of the General Statutes and the governing authority of same is hereby authorized and empowered to invest any surplus funds or any funds not needed for the immediate use of the district in United States bonds or any securities or type of investment in which guardians, executors, administrators and others acting in a fiduciary capacity are authorized to make investments by virtue of Article I of Chapter 36 of the General Statutes as amended. (1951, c. 1058, s. 1.)

SUBCHAPTER IV. DRAINAGE BY COUNTIES.

Art. 12. Protection of Public Health.

§ 156-139. Cleaning and draining of streams, etc., under supervision of governmental agencies.

For comment on this and the following two sections, see 21 N. C. Law Rev. 352.

Chapter 157. Housing Authorities and Projects.

Art. 1. Housing Authorities Law.

§ 157-2. Finding and declaration of necessity.

Editor's Note.—Chapter 1081 of Session Laws 1949, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

§ 157-3. Definitions.

Editor's Note.—Chapter 1081 of Session Laws 1949, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

Chapter 158. Local Development.

§ 158-1. Purposes of chapter.

Payment of Expenses of Chamber of Commerce Not Authorized.—This chapter does not authorize a city to use its tax revenues for the payment of expense incident to the ordinary activities of the chamber of commerce of the

city. *Horner v. Chamber of Commerce*, 231 N. C. 440, 57 S. E. (2d) 789.

§ 158-3. Election to adopt chapter.

Cited in *Horner v. Chamber of Commerce*, 231 N. C. 440, 57 S. E. (2d) 789.

Chapter 159. Local Government Acts.

Art. 1. Local Government Commission and Director of Local Government.

Sec.
159-49.2. Investment of bond proceeds pending use.

Art. 1. Local Government Commission and Director of Local Government.

§ 159-7. Application to commission for issuance of bonds or notes.—Before any bonds or notes may be issued by or in behalf of a unit the board authorized by law to issue the same, or a duly authorized agent of said board, shall file application with the commission on a form prescribed by the commission for its approval of the proposed bonds or notes, which application shall state such facts and shall have annexed thereto such exhibits in regard to such bonds or notes and to such unit

and its financial condition as may be required by the commission. In any case where the question of issuance of proposed bonds or notes is required by law or the constitution to be submitted to the voters at an election such election with respect to such bonds or notes shall not be valid unless the application required herein shall have been filed not later than forty days (Sundays and holidays included) prior to such election. A statement signed by either the chairman or secretary of the commission directed to the board authorized by law to issue the proposed bonds or notes and containing the date on which such application was filed and either a description of the proposed bonds or notes as set forth in the application or reference to the order, ordinance or resolution pursuant to which the proposed bonds or notes may be issued shall be conclusive evidence that the provisions of

this section are complied with. The commission shall consider such application and shall determine whether the issuance of such bonds or notes is necessary or expedient. (1931, c. 60, s. 11; 1949, c. 1085.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 159-42. Law applicable to all counties, cities and towns.—The provisions of this article shall apply to every unit having the power to levy taxes ad valorem, regardless of any provisions to the contrary in any general, special or local act enacted before the adjournment of the regular session of the General Assembly in one thousand nine hundred and forty-nine. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191; 1947, c. 992; 1949, c. 925.)

Editor's Note.—The 1947 amendment substituted "forty-seven" for "forty-one" in the last line.

The 1949 amendment substituted "forty-nine" for "forty-seven," and inserted the word "general" in line four.

For a brief comment on the 1947 amendment, see 25 N. C. Law Rev. 455.

§ 159-49.1. Investment of unused proceeds of sale of bonds by counties, cities and towns in designated securities.

For comment on this section, see 21 N. C. Law Rev. 357.

§ 159-49.2. Investment of bond proceeds pending use.—When the proceeds of any bonds heretofore or hereafter sold by any county, city or town, shall not be needed for a period of not less than ninety days to meet contractual or other obligations in connection with the purposes for which such bonds were issued, such county, city or town may, with the prior approval of the local government commission, invest the proceeds of such bonds not so needed in the securities listed in G. S. § 159-49.1; provided, the maturities of such securities conform to the date or dates such county, city or town will need the moneys so invested. (1949, c. 858.)

Chapter 160. Municipal Corporations.

Art. 2. Municipal Officers.

Part 3. Constable and Policemen.

Sec.

160-18.1. Right of police officers to transport prisoners and attend court beyond territorial jurisdiction.

Art. 6. Sale of Municipal Property.

160-61.1. Certain counties and municipalities authorized to execute warranty deeds; relief from personal liability.

Art. 8. Public Libraries.

160-77. Joint libraries.

Art. 12. Recreation Systems and Playgrounds.

160-155. Title.

160-156. Declaration of state public policy.

160-157. Definitions.

160-158. Powers.

160-159. Funds.

160-160. System conducted by unit or recreation board.

160-161. Appointment of members to board.

160-162. Power to accept gifts and hold property.

160-163. Petition for establishment of system and levy of tax; election.

160-163.1. Validation of bond elections.

160-164. Joint playgrounds or neighborhood recreation centers.

Art. 12A. Bird Sanctuaries.

160-166.1. Municipalities authorized to create bird sanctuaries within their territorial limits.

160-166.2. Penalty for violation.

Art. 14. Zoning Regulations.

160-181.1. Article applicable to buildings constructed by state and its subdivisions.

Art. 15A. Liability for Negligent Operation of Motor Vehicles.

160-191.1. Municipality empowered to waive governmental immunity.

Sec.

160-191.2. Contract of insurance; payment of premiums.

160-191.3. Action for negligence in performance of governmental, etc., function authorized; other defenses not affected.

160-191.4. Municipality liable only upon claims arising after procurement of insurance.

160-191.5. Knowledge of insurance to be kept from jury.

Art. 18. Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

160-203.1. Powers over cemetery outside corporate limits.

Part 6. Fire Protection.

160-238. Fire protection for property outside city limits; injury to employee of fire department.

Part 9. Care of Cemeteries.

160-260.1. Right to condemn and take over cemeteries adjoining municipal cemeteries.

160-260.2. Right to condemn easement for perpetual care.

Art. 19. Exercise of Powers by Governing Body.

Part 3. Officers.

160-273. City clerk elected; appointment of deputy clerk; powers and duties.

Part 4. Contracts Regulated.

160-280. Separate specifications for contracts; responsible contractors; liability of separate contractors.

160-281.1. Validation of conveyances by cities, towns, school districts, etc.

Art. 34. Revenue Bond Act of 1938.

160-423. [Struck out.]

Art. 34A. Bonds to Finance Sewage Disposal System.

160-424.1. Issuance of bonds by municipality.

160-424.2. Additional powers of municipality.

Sec.

- 160-424.3. Fixing or revising schedule of rates, etc., for services and facilities.
- 160-424.4. Authority to charge and collect rates, fees, etc.; basis of computation; additional charge for cause.
- 160-424.5. Inclusion of charges as part of water bill; water disconnected upon failure to pay charges.
- 160-424.6. Revenues may be pledged to bond retirement.
- 160-424.7. Powers herein granted are supplemental.
- 160-424.8. Refunding bonds; approval and sale of bonds issued under article.

Art. 35. Capital Reserve Funds.

- 160-429. How the capital reserve fund may be established; revenues derived from public utilities.
- 160-430.1. Increases to capital reserve fund.
- 160-444. Termination of power to establish and increase capital reserve fund.

Art. 36. Extension of Corporate Limits.

- 160-445. Procedure for adoption of ordinance extending limits; effect of adoption when no election required.
- 160-446. Referendum on question of extension.
- 160-447. Extent of participation in referendum; call of election.
- 160-448. Action required by county board of elections; publication of resolution as to election; costs of election.
- 160-449. Ballots; effect of majority vote for extension.
- 160-450. Map of annexed area, copy of ordinance and election results recorded in office of register of deeds.
- 160-451. Surveys of proposed new areas.
- 160-452. Areas having less than twenty-five eligible voter-residents.
- 160-453. Application of article.

Art. 37. Urban Redevelopment Law.

- 160-454. Short title.
- 160-455. Findings and declaration of policy.
- 160-456. Definitions.
- 160-457. Formation of commissions.
- 160-458. Appointment and qualifications of members of commission.
- 160-459. Tenure and compensation of members of commission.
- 160-460. Organization of commission.
- 160-461. Interest of members or employees.
- 160-462. Powers of commission.
- 160-463. Preparation and adoption of redevelopment plans.
- 160-464. Provisions of the redevelopment contract; powers of the commission; procedure on sale of contracts.
- 160-465. Eminent domain.
- 160-466. Issuance of bonds.
- 160-467. Powers in connection with issuance of bonds.
- 160-468. Right of obligee.
- 160-469. Cooperation by public bodies.
- 160-470. Grant of funds by community.
- 160-471. Records and reports.
- 160-472. Title of purchaser.

Sec.

- 160-473. Preparation of general plan by local governing body.
- 160-474. Inconsistent provisions.

Art. 38. Parking Authorities.

- 160-475. Short title.
- 160-476. Definitions.
- 160-477. Creation of authority.
- 160-478. Appointment, removal, etc., of commissioners; quorum; chairman; vice-chairman, agents and employees; duration of authority.
- 160-479. Duty of authority and commissioners.
- 160-480. Interested commissioners or employees.
- 160-481. Purpose and powers of the authority.
- 160-482. Conveyance of property by the city to the authority; acquisition of property by the city or by the authority.
- 160-483. Contracts.
- 160-484. Moneys of the authority.
- 160-485. Bonds of the authority.
- 160-486. Notes of the authority.
- 160-487. Approval of local government commission; application of Local Government Act.
- 160-488. Agreements of the State.
- 160-489. State and city not liable on bonds.
- 160-490. Bonds legal investments for public officers and fiduciaries.
- 160-491. Exemptions from taxation.
- 160-492. Tax contract by the State.
- 160-493. Remedies of bondholders.
- 160-494. Actions against the authority.
- 160-495. Termination of authority.
- 160-496. Inconsistent provisions in other acts superseded.

Art. 39. Financing Parking Facilities.

- 160-497. Declaration of public necessity.
- 160-498. Definitions.
- 160-499. General grant of powers.
- 160-500. Issuance of bonds.
- 160-501. Parking meters.
- 160-502. Pledge of revenues.
- 160-503. Authorizing ordinance.
- 160-504. Special assessments.
- 160-505. Exemption of property from taxation.
- 160-506. Alternative method.
- 160-507. Liberal construction.

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.**Art. 1. General Powers.****§ 160-1. Body politic.****Powers.—**

A municipal corporation is a political subdivision of the State and can exercise only such powers as are granted in express words, or those necessary or fairly implied or incident to the powers expressly conferred, or those essential to the accomplishment of the declared objects and purposes of the corporation. *Stephenson v. Raleigh*, 232 N. C. 42, 59 S. E. (2d) 195.

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by the general laws of the State applicable to all municipal corporations, and the powers granted in the charter will be construed together with those given under the general statutes. *Laughinghouse v. New Bern*, 232 N. C. 596, 61 S. E. (2d) 802.

A municipality is a creature of the State and has "the powers prescribed by statute, and those necessarily implied by law, and no other," therefore a city or town cannot

make a rightful outlay of its tax revenues unless the outlay is explicitly or implicitly authorized by a statute conforming to the Constitution. *Horner v. Chamber of Commerce*, 231 N. C. 440, 57 S. E. (2d) 789.

The implied powers of a municipality are those which are necessarily or fairly implied in or incident to the powers expressly granted, or essential to the accomplishment of the purposes of the corporation. *Green v. Kitchin*, 229 N. C. 450, 50 S. E. (2d) 545. For a leading article on this case, see 27 N. C. Law Rev. 500.

A municipal corporation has no authority to waive its immunity from tort liability in performance of its governmental functions. *Stephenson v. Raleigh*, 232 N. C. 42, 59 S. E. (2d) 195.

§ 160-2. Corporate powers.

10. To establish, erect, repair, maintain and operate a city or town jail or guardhouse, and to raise by taxation the moneys necessary therefor. (Rev., s. 2916; Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; 1907, c. 978; P. L. 1917, c. 223; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 6; 1949, c. 938; C. S. 2623.)

Cross References.—As to authority to lease, convey or acquire property for use as armory, see § 143-235. As to appropriations for benefit of military units, see § 143-236.

Editor's Note.—The 1949 amendment added subsection 10. As the rest of the section was not affected by the amendment it is not set out.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 473.

Subsection 5.

Local Modification.—City of Reidsville: 1949, c. 323.

Subsection 6.

When Approval of Voters Not Required.—Where a municipality decides to abandon the generation of electricity by the use of Diesel engines and substitute therefor electricity purchased wholesale for distribution through its electric plant, and in pursuance of such change of policy, advertises a sale of Diesel engines under § 160-59, there is no sale by such municipality of its electric plant requiring approval of a majority of the qualified voters under this section. *Mullen v. Louisburg*, 225 N. C. 53, 33 S. E. (2d) 484.

Discretion of Local Body.—The terms and conditions upon which franchises to public utilities are to be granted, unless clearly unreasonable or expressly prohibited by law, rest in the sound discretion of the local body. *Mullen v. Louisburg*, 225 N. C. 53, 33 S. E. (2d) 484.

Statutory Term Read into Contract.—Where a franchise granted by a municipality fails to stipulate a term, the statutory term of sixty years will be read into the contract as a part thereof. *Boyce v. Gastonia*, 227 N. C. 139, 41 S. E. (2d) 355.

Art. 2. Municipal Officers.

Part 1. Commissioners.

§ 160-9. Commissioners appoint other officers and fix salaries.

Cited in *Green v. Kitchin*, 229 N. C. 450, 50 S. E. (2d) 545.

Part 3. Constable and Policemen.

§ 160-18.1. Right of police officers to transport prisoners and attend court beyond territorial jurisdiction.—Police officers are hereby authorized to transport persons charged with crime beyond the corporate limits for the purpose of placing them in jail or to transport persons charged with crime from one jail to another jail or to return persons charged with crime from a point outside the corporate limits to the municipality or to a jail. They are further authorized to go beyond the city limits for the purpose of attending court. (1951, c. 25.)

§ 160-20. Policemen appointed.

Municipality May Send Policemen to Training School.—The explicit power of a municipality to appoint and employ police contemplates that the persons so engaged be qualified and competent, and therefore a municipality has

implied authority, exercisable within the discretion of its governing body, to send its policemen to a police training school and to make proper expenditures for this purpose. *Green v. Kitchin*, 229 N. C. 450, 50 S. E. (2d) 545. For a leading article on this case, see 27 N. C. Law Rev. 500.

§ 160-21. Policemen execute criminal process.

Arrest without a Warrant.—

A police officer within the limits of the city which has clothed him with authority, like a sheriff or constable, may summarily and without warrant arrest a person for a misdemeanor committed in his presence. This is a necessary concomitant of police power and essential for police protection. But in such case it is the duty of the officer to inform the person arrested of the charge against him and immediately take him before someone authorized to issue criminal warrants and have a warrant issued, giving him opportunity to provide bail and communicate with counsel and friends. *Perry v. Hurdle*, 229 N. C. 216, 49 S. E. (2d) 400.

Cited in *Green v. Kitchin*, 229 N. C. 450, 50 S. E. (2d) 545.

Part 4. Planning Boards.

§ 160-22. Creation and duties.

The governing body of any city or town is hereby authorized to enter into any agreements with any other city, town or county for the establishment of a joint planning board. (1919, c. 23, s. 1; 1945, c. 1040, s. 2; C. S. 2643.)

Local Modification.—Buncombe, Chatham, Stanly, Vance, Wake: 1945, c. 1040, ss. 2½, 3.

Editor's Note.—

The 1945 amendment added the above sentence at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Session Laws 1949, c. 876, amended Session Laws 1945, c. 1040, s. 3, by striking out the words "Durham county." This had the effect of removing "Durham" from the list of counties appearing under "Local Modification" and of making this section applicable to Durham county.

Part 5. General Qualification of Officers.

§ 160-25. Must be voters in town or city.—No person shall be a mayor, commissioner, councilman, or alderman of any city or town unless he shall be a qualified voter therein. (Rev., s. 2941; Code, s. 3796; 1870-1, c. 24, s. 3; 1951, c. 24; C. S. 2646.)

Local Modification.—Nash: 1951, c. 1208, s. 1; Town of Andrews: 1947, c. 419; city of Bryson City: 1947, c. 363; town of Franklin: 1947, c. 38; town of Highlands: 1947, c. 45; town of Marion: 1947, c. 793; town of Mars Hill: 1947, c. 566; town of Nashville: 1951, c. 1208; town of Old Fort: 1947, c. 793; town of Robbinsville: 1949, c. 55; town of Spring Hope in Nash county: 1951, c. 281; town of Sylva: 1947, c. 11; town of Wallace: 1947, c. 799; municipalities in Transylvania: 1947, c. 246.

Editor's Note.—The 1951 amendment deleted the words "intendant of police" and "or other chief officer" formerly appearing in this section, and inserted "councilman."

A person not a resident of an unincorporated municipality may not be elected chief of police by the board of commissioners of the municipality. *Barlow v. Benfield*, 231 N. C. 663, 58 S. E. (2d) 637.

Art. 3. Elections Regulated.

§ 160-29. Application of law, and exceptions.

Local Modification.—City of Lenoir: 1947, c. 615, s. 2.

§ 160-30. When election held.

Editor's Note.—Session Laws 1947, c. 615, s. 1, provides: "The provisions of sections 160-30 through 160-51 of the General Statutes shall be applicable to all municipal elections held in the city of Lenoir in Caldwell county, except primary elections."

§ 160-35. Notice of new registration.

Local Modification.—Town of Brevard: 1949, c. 852, s. 2.

§ 160-40. Practice in challenges.

Local Modification.—Town of Brevard, temporary: 1949, c. 852, s. 5.

Art. 4. Ordinances and Regulations.

§ 160-52. General power to make ordinances.

Editor's Note.—As to ordinances "inconsistent with this chapter and the law of the land," see 27 N. C. Law Rev. 567.

Sunday Ordinances.—By virtue of this section the power to enact Sunday ordinances has been delegated to the municipalities of the state. *State v. Trantham*, 230 N. C. 641, 55 S. E. (2d) 198.

Cited in *State v. Stallings*, 230 N. C. 52, 52 S. E. (2d) 901.

§ 160-54. Repair streets and bridges.—The board of commissioners shall provide for keeping in proper repair the streets and bridges in the town, in the manner and to the extent they may deem best; may cause such improvements in the town to be made as may be necessary: Provided, however, so long as the maintenance of any streets and/or bridges within the corporate limits of any town be taken over by the state highway and public works commission, such town shall not be responsible for the maintenance thereof and shall not be liable for injuries to persons or property resulting from the failure to maintain such streets and bridges. (Rev., s. 2930; Code, s. 3803; R. C., c. 111, s. 16; 1949, c. 862; C. S. 2675.)

Editor's Note.—The 1949 amendment added the proviso.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 474.

City Cannot Plead Governmental Immunity.—A municipality cannot, with impunity, create in its streets a condition palpably dangerous, neglect to provide the most ordinary means of protection against it, and avoid liability for proximate injury on the plea of governmental immunity. *Hunt v. High Point*, 226 N. C. 74, 36 S. E. (2d) 694, 696.

This section imposes on towns and cities a positive duty to maintain streets in a reasonably safe condition for travel, and negligent failure to do so renders municipality liable to private action for proximate injury. *Hunt v. High Point*, 226 N. C. 74, 36 S. E. (2d) 694, 695.

Duty to Take Measures to Avert Injury.—Negligent failure to take such measures as ordinary prudence requires to avert injury, where the municipality has actual or imputable knowledge of the dangerous condition, will render municipality liable for injury proximately caused. *Hunt v. High Point*, 226 N. C. 74, 36 S. E. (2d) 694.

Failure to Light Street.—While a city may not be under legal necessity of lighting its streets at all, where it does maintain street lights its failure to provide lighting which is reasonably required at a particular place because of the dangerous condition of street is negligent failure to discharge its duty to maintain the streets in a reasonably safe condition for travel. *Hunt v. High Point*, 226 N. C. 74, 36 S. E. (2d) 694.

§ 160-55. May abate nuisances.—The board of commissioners may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens. Provided, however, it shall not be a nuisance for an employee or servant of a railroad company to make necessary smoke when stoking or operating a coal burning locomotive. (Rev., s. 2929; Code, s. 3802; R. C., c. 111, s. 15; 1949, c. 594, s. 1; C. S. 2676.)

Editor's Note.—The 1949 amendment added the proviso.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 474.

Art. 5. Municipal Taxation.

§ 160-56. Commissioners may levy taxes.—The board of commissioners may annually levy and cause to be collected for municipal purposes an ad valorem tax not exceeding the limitation expressed in § 160-402, and one dollar on each poll, on all persons and property within the corporation, which may be liable to taxation for state and county purposes; and may annually lay a

tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law; and may lay a tax on all such shows and exhibitions for reward as are taxed by the general assembly; and on all dogs, and on swine, horses and cattle, running at large within the town: Provided, however, the board of commissioners may re-adopt any existing ordinance or ordinances levying, assessing, imposing and defining the license and privilege taxes of any city by reference, without reading the same in detail, and by the reading of any amendments or additions thereto. (Rev., s. 2924; Code, s. 3800; R. C., c. 111, s. 13; 1862, c. 51; 1949, c. 933; C. S. 2677.)

Editor's Note.—The 1949 amendment added the proviso.

Art. 6. Sale of Municipal Property.

§ 160-59. Public sale by mayor and commissioners.

Local Modification.—City of Reidsville: 1949, c. 323.

Applied in *Mullen v. Louisburg*, 225 N. C. 53, 33 S. E. (2d) 484.

§ 160-61.1. Certain counties and municipalities authorized to execute warranty deeds; relief from personal liability.—1. The governing bodies of counties and municipal corporations are hereby authorized and empowered to execute and deliver conveyances to any property, whether acquired by tax or assessment foreclosure or otherwise, with full covenants of warranty whenever in the discretion of said governing bodies it is to the best interest of said counties or municipal corporations to convey by warranty deed.

2. Members of the governing bodies of counties and municipal corporations are hereby relieved of any personal or individual liability by reason of the execution of any such conveyances with covenants of warranty.

3. This section shall apply only to Wake County and the municipal corporations therein, Forsyth county and the municipal corporations therein, Rowan county and the municipal corporations therein, and to the following named counties and the municipal corporations therein, to-wit: Wayne, Lenoir, Beaufort, New Hanover, Union, Franklin, Bertie, Bladen, Pender, Orange, Wilson, Richmond, Davidson, Halifax, Gates, Nash, Edgecombe. (1945, c. 962.)

Art. 8. Public Libraries.

§ 160-65. Library established upon petition and popular vote.—The governing body of any incorporated city or county, upon petition of fifteen per cent (15%) of the registered voters in said city or county who voted in the last election for governor, may submit the question of the establishment and support of a free public library to the voters at a special election for that purpose. Such special election shall be called by the proper election authorities of the incorporated city or county, and at least twenty days' public notice of same shall be given prior to the opening of the registration books. The registration books shall remain open for the same period of time before said special election as is required by law for them to remain open for a regular election. A new registration of the qualified voters shall be ordered before said special election is held and such new registration shall be made in accordance with the laws for the registration of voters in mu-

municipal elections as provided by chapter one hundred and sixty of the General Statutes of North Carolina and as provided by chapter one hundred and sixty-three of the General Statutes of North Carolina in the case of a county. At said special election there shall be submitted to the voters qualified to vote in said election the question of whether a special tax shall be levied and a free public library established or maintained as herein provided. The ballot to be used in voting on whether any tax authorized by this section shall be levied and a free public library established shall contain the following question: "Shall a special tax be levied for the establishment, maintenance and support of public libraries?", with appropriate spaces for marking "yes" or "no." If a majority of the qualified voters voting at said special election vote in the affirmative, the governing body of the voting unit shall establish the library and may levy, and cause to be collected as other general taxes are collected, a special tax in the amount requested by the petition, which shall not be more than ten cents (10c) nor less than three cents (3c) on the one hundred dollars (\$100.00) of the assessed value of the taxable property of such unit. The funds so derived shall constitute the library fund, and shall be kept separate from the other funds of the city or county, to be expended exclusively on such library. When such library has been established, it may be abolished only by a vote of the people in the same manner in which it was established.

In any city or county in which a tax for library purposes has been voted under this section or any other law, the governing body thereof, on the recommendation of the board of trustees of the library, may submit to the voters of such city or county the question as to an increase or decrease, within the limitations of this section, of such tax so authorized. The question shall be submitted to the voters in the manner provided by this section. No election under this section shall be held on the day of any biennial election for county officers, or within sixty days of such an election.

The provisions of this section shall apply to the territory in any county in this state situated outside incorporated cities or towns therein which have established libraries upon petitions and popular elections under this section. It is the intent and purpose of this section to authorize qualified voters in the territory lying outside incorporated cities and towns in this state to file petitions with the governing body of the county in which they are situated, and to be permitted to vote for the establishment of libraries in said territory, and to levy and collect taxes for the establishment and maintenance of the same in the manner and within the limitations set out in this section. (1911, c. 83, s. 1; 1927, c. 31, s. 1; 1933, c. 365, s. 1; 1945, c. 1005; 1949, cc. 351, 353; C. S. 2694.)

Editor's Note.—

The 1945 amendment rewrote this section.

The first 1949 amendment added the last paragraph, and the second 1949 amendment substituted "ten cents (10c)" for "five cents (5c)" in the second from the last sentence of the first paragraph.

§ 160-77. Joint libraries.—Two or more counties or municipalities, or a county or counties and a municipality or municipalities, may join for the purpose of establishing and maintaining a free

public library under the terms and provisions contained in this article.

Such combined governmental units shall have the same privileges and shall be subject to the same restrictions as a single unit under this article, and all the provisions of this article, unless inconsistent, shall be applicable to the combined units.

The governing bodies of the combined units shall perform their appropriate duties with regard to the library in the same manner as for a single unit under this article.

Such joint library shall be governed by a board of trustees to be composed of three persons from each of the participating units. The governing body of each unit shall choose the three persons to represent it from the citizens at large with reference to their fitness for such office. For the initial term, one member shall be appointed for two years, one for four years, and one for six years, and until their successors are appointed and qualified. Thereafter, the terms of members shall be for six years and until their successors are appointed and qualified. Vacancies occurring on the board shall be filled by the governing body of the appointing unit for the unexpired term. Any member may be removed by the governing body appointing him for incapacity, unfitness, misconduct or neglect of duty. The board shall serve without compensation.

The amount each participating unit shall contribute to the establishment and support of the joint library shall be based upon relative population and the total assessed value of property in each unit.

Should any county at any time desire to withdraw from such combination, the said county shall be entitled to such proportion of the property as may have been agreed upon in the terms of combination at the time such joint action was taken. (1933, c. 365, s. 7; 1945, c. 401.)

Editor's Note.—The 1945 amendment rewrote this section.

Art. 9. Local Improvements.

§ 160-78. Explanation of terms.

"Street improvement" includes the grading, regrading, paving, repaving, macadamizing, remacadamizing and bituminous surface treatment constructed on a soil stabilized base course with a minimum thickness of four inches, (such soil stabilizing agents to be top soil, sand clay, sand clay gravel, crushed stone, stone dust, portland cement, tar, asphalt or any other stabilizing materials of similar character, or any combination thereof,) of public streets and alleys, and the construction, reconstruction, and altering of curbs, gutters and drains in public streets and alleys.

(1945, c. 461.)

Editor's Note.—The 1945 amendment inserted in the paragraph defining "Street improvement" the provision as to bituminous surface treatment. As the rest of the section was not affected by the amendment it is not set out.

Cited in *Raleigh v. Mechanics, etc.*, Bank, 223 N. C. 286, 26 S. E. (2d) 573.

§ 160-83. What resolution shall contain.

Cited in *Salisbury v. Arey*, 224 N. C. 260, 29 S. E. (2d) 894.

§ 160-85. Assessments levied.

School Property Subject to Assessment for Street Improvements.—Lands owned by "The School Committee of

Raleigh Township, Wake County," and used exclusively for public school purposes, are liable for assessment for street improvements made by the city of Raleigh under this article. *Raleigh v. Raleigh City Administrative Unit*, 223 N. C. 316, 26 S. E. (2d) 591.

§ 160-88. Hearing and confirmation; assessment lien.

Priority of Lien.—

In an action to foreclose street assessment liens it was said that if it be thought that effect should be given to the provisions relative to ad valorem taxes in § 105-340, that the lien for taxes levied shall attach to all the real estate of the taxpayer and shall continue until such taxes shall be paid, it may be noted that this section, relating to local assessments provides only that the assessment when confirmed shall be a lien on the real property against which it is assessed, superior to all other liens. *Raleigh v. Mechanics, etc., Bank*, 223 N. C. 286, 29 S. E. (2d) 573.

§ 160-90. Power to adjust assessments.

An extension resolution providing a new series of installment payments does not invalidate the lien of a municipality for an assessment for public improvements where the sums of the new installments in the aggregate exceed the amount actually due at the time of the extension. Differences may be adjusted under this section. *Salisbury v. Arey*, 224 N. C. 260, 29 S. E. (2d) 894.

§ 160-91. Payment of assessment in cash or by installments.

Right to Declare All Installments Due.—

In accord with original. See *Salisbury v. Arey*, 224 N. C. 260, 29 S. E. (2d) 894.

When It Is Mandatory upon City to Allow Installment Payment.—The provisions in this section were enacted for the benefit of the property owner, giving the owner a period of thirty days from the date notice is given as required by the following section, in which to pay the assessment in cash, without interest; or, if he should so elect and give notice in writing to the municipality within said period of thirty days, that he desires to pay his assessment in installments, then it becomes mandatory upon the city to permit such property owner to pay his assessment in installments. *Salisbury v. Arey*, 224 N. C. 260, 29 S. E. (2d) 894.

The option passes to the municipality to proceed to foreclose and collect the entire assessment or to collect the assessment in installments, as provided in the original resolution authorizing the improvements where the property owner remains silent and neither pays in cash within the thirty-day period nor signifies in writing his election to pay in installments. *Salisbury v. Arey*, 224 N. C. 260, 29 S. E. (2d) 894.

Cited in *Raleigh v. Mechanics, etc., Bank*, 223 N. C. 286, 26 S. E. (2d) 573.

§ 160-92. Payment of assessment enforced.

Cross Reference.—

See annotations under preceding section. Cited in *Raleigh v. Mechanics, etc., Bank*, 223 N. C. 286, 26 S. E. (2d) 573.

§ 160-93. Sale or foreclosure for unpaid assessments barred in ten years; no penalties.

Editor's Note.—For article on collectibility of special assessments more than ten years delinquent, see 22 N. C. Law Rev. 123.

Section Applies to Action to Foreclose Drainage Assessment.—This section applies to an action brought by a drainage district for foreclosure of delinquent drainage assessments, and authorizes "one reasonable attorney's fee for the plaintiff" to be included and taxed in the costs in such an action. *Robeson County Drainage Dist. v. Bullard*, 229 N. C. 633, 50 S. E. (2d) 742.

When Allowance of Attorney's Fee to Be Made.—It would seem that the legislature intended that the allowance of an attorney's fee under this section should be made at the conclusion of the proceeding and not in the course of it. *Robeson County Drainage Dist. v. Bullard*, 229 N. C. 633, 50 S. E. (2d) 742.

Cited in *Raleigh v. Raleigh City Administrative Unit*, 223 N. C. 316, 26 S. E. (2d) 591.

§ 160-94. Extension of time for payment of special assessments.

Editor's Note.—

For article on collectibility of special assessments more than ten years delinquent, see 22 N. C. Law Rev. 123.

Extension Contrary to Section Is Not Void.—A resolution of the governing body of a municipality, providing for an extension of the payments of an assessment for local improvement in installments, which is contrary to this section, is defective but not void, and may be amended by a subsequent resolution to conform to the statutory requirements. *Salisbury v. Arey*, 224 N. C. 260, 29 S. E. (2d) 894.

When Statute of Limitations Begins to Run.—Where a new series of installment payments of an assessment for local improvements is provided, under this section, the ten-year statute of limitations begins to run on each new installment as it becomes due. *Salisbury v. Arey*, 224 N. C. 260, 29 S. E. (2d) 894.

§ 160-100. Assessment books prepared.

Stated in *Salisbury v. Arey*, 224 N. C. 260, 29 S. E. (2d) 894.

Art. 10. Inspection of Meters.

§ 160-114. Free access to meters.

Cited in *Raleigh v. Mechanics, etc., Bank*, 223 N. C. 286, 26 S. E. (2d) 573.

Art. 11. Regulation of Buildings.

§ 160-122. County electrical inspectors.—The county commissioners of each county may, in their discretion, designate and appoint one or more electrical inspectors, who shall qualify as hereinafter prescribed, whose duty shall be to enforce all state and local laws governing electrical installations and materials, and to make inspections of all new electrical installations and such re-inspections as may be prescribed by the county commissioners in buildings located in any town of one thousand population or less and/or those buildings located outside the corporate limits of all cities and towns, and not otherwise included in this article, and to issue a certificate of inspection where such installations fully meet the requirements for such installations as set forth in this article, or such additional requirements as the board of county commissioners may prescribe. Nothing contained in this article shall be construed as prohibiting said board of county commissioners designating as county inspector any person who also has or may be designated as electrical inspector in any city or town located within said county, or from prohibiting two or more counties from designating the same inspector to perform the duties herein mentioned for such two or more counties. The county commissioners shall also fix the fees to be charged by such county inspector, which fees shall be paid by the owner of the properties so inspected.

The fees collected by the inspector may be retained by him in payment for his services, or the county commissioners, in their discretion, may pay the inspector a fixed salary, in which case the fees collected for permits and inspections shall be paid to the county treasury.

It shall be unlawful for the county electrical inspector or any of his authorized agents to engage in the business of installing electrical wiring, devices, appliances or equipment, and he shall have no financial interest in any concern engaged in such business in the county at any time while holding such office as herein provided for.

Before confirmation of his appointment, the electrical inspector shall take and pass a qualifying

examination to be based on the last edition of the National Electrical Code, as filed with the secretary of state. This examination shall be in writing and shall be conducted according to the rules and regulations prescribed by and under the supervision of the state electrical engineer and inspector and the board of examiners of electrical contractors. The prescribed rules and regulations may provide for the appointment of class I, class II and class III inspectors in accordance with the qualifications revealed by the examination with respect to the installation of various types and character of equipment and facilities. Examinations shall be given quarterly in Raleigh, or in such other places as may be designated by the state electrical engineer and inspector, at his discretion. Examinations shall be based on the type and character of electrical installations being made in the territory in which the applicant wishes to serve as electrical inspector. An electrical inspector having qualified for a class I appointment shall be eligible without further examination to serve as electrical inspector anywhere in the state, but an inspector having qualified for a class II or class III appointment shall be limited to the territory for which he may qualify.

Upon passing the required examination by any person, a certificate approving him as inspector for a designated territory shall be issued by the commissioner of insurance. Such certificate must be renewed annually between January 1st and January 31st and shall be subject to cancellation at any time if the inspector is removed from office for cause by the board of county commissioners, which removal is hereby authorized. The fee for examination shall be five dollars (\$5.00), to be returned if the applicant fails to pass. The annual renewal fees for a certificate of appointment shall be one dollar (\$1.00). If the person appointed as electrical inspector by the county commissioners fails to take the examination or to make the necessary passing grade, the county commissioners shall continue to make such appointments until one or more applicants has passed the examination. In the interim, a temporary inspector may act with the approval of the commissioner of insurance.

The inspector appointed shall give a bond approved by the county commissioners for the faithful performance of his duties. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651.)

Editor's Note.—

The 1947 amendment made changes in the first paragraph and added all of the section beginning with the second paragraph.

Editor's Note.—The 1951 amendment struck out the words "to issue permits for" formerly appearing after the word "materials" in line seven.

§ 160-141. Electric wiring of houses.

Local Modification.—City of Salisbury: 1949, c. 1044.

§ 160-146. Fees of inspector.

Local Modification.—City of Salisbury: 1949, c. 1044.

Art. 12. Recreation Systems and Playgrounds.

§ 160-155. Title.—This article shall be known and may be cited as the "Recreation Enabling Law." (1945, c. 1052.)

Editor's Note.—

The 1945 amendment rewrote this article, formerly containing twelve sections, to appear as set out herein. The

amendatory act provides: "Nothing in this act shall have the effect of repealing Public-Local or Private Acts creating or authorizing the creation of any recreational system by a unit or relating to the management thereof."

Cited in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702.

§ 160-156. Declaration of state public policy.—

As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follows: The lack of adequate recreational programs and facilities is a menace to the morals, happiness and welfare of the people of this state in times of peace as well as in times of war. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by the governing bodies of the several political and educational subdivisions of the state. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require an adequate recreation program and that the creation, establishment and operation of a recreation system is a governmental function and a necessary expense as defined by article VII, section seven, of the constitution of North Carolina (1945, c. 1052.)

Dedication for Recreation Facilities Is for Public Purpose

—The power of cities to dedicate real property for use as recreation centers and for other recreational purposes is expressly conferred by this section, and the exercise of this power is in the public interest and for a public purpose. *Brumley v. Baxter*, 225 N. C. 691, 36 S. E. (2d) 281, 286; 162 A. L. R. 930, citing *Atkins v. Durham*, 210 N. C. 295, 186 S. E. 330; *White v. Charlotte*, 209 N. C. 573, 575, 18 S. E. 730.

Stated in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702.

§ 160-157. Definitions.—(1) Recreation, for the purpose of this article, is defined to mean those activities which are diversionary in character and which aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental and cultural development and experiences of a leisure time nature.

(2) Unit, for the purpose of this article, means county, city and town. (1945, c. 1052.)

§ 160-158. Powers.—The governing body of any unit, as defined in § 160-157, may exercise the following powers for recreational purposes:

(1) Establish and conduct a system of supervised recreation for such unit.

(2) Set apart for use as parks or playgrounds recreational centers or facilities, any lands or buildings owned by or leased to such unit and may improve and equip such lands or buildings.

(3) Acquire lands or buildings by gift, purchase, lease or loan, or by condemnation as provided by chapter forty, Eminent Domain, of the General Statutes.

(4) Accept any gift or bequest of money or other personal property or any donation to be applied principal or income for recreational use.

(5) Provide, construct, equip, operate and maintain parks, playgrounds, recreation centers and recreation facilities, and all buildings and structures necessary or useful in connection therewith.

(6) Appropriate funds for the purpose of carrying out the provisions of this article. (1945, c. 1052.)

§ 160-159. Funds.—If the governing body of any unit, as defined in § 160-157, finds it necessary

for the purpose of carrying out the provisions of this article, the governing body is hereby authorized to call a special election without a petition for that purpose as provided by § 160-163, and submit as therein provided to the qualified voters of said unit the question of whether or not a special tax shall be levied and/or bonds issued for the purpose of acquiring lands for parks, playgrounds and buildings, and the improvement thereof, and for equipping and operating same. (1945, c. 1052.)

Cited in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702.

§ 160-160. System conducted by unit or recreation board.—If a recreational system is established, it may be conducted by the unit as any other department of the unit is conducted, or if the governing body of the unit determines that it is for the best interest of the system that it be supervised and directed by a recreation board or commission, then such governing body may create such board or commission by ordinance or resolution to be known as the "recreation board or commission of the unit" and may vest such board or commission with the authority to provide, maintain, conduct and operate the recreational system with authority to employ directors, supervisors and play leaders and such other officers or employees as may be deemed best within the budget provided for the commission or board by the unit or from appropriations made by it, or from other funds in the hands of the commission or board. The board or commission may be vested with such powers and duties as to the governing body may seem proper. (1945, c. 1052.)

§ 160-161. Appointment of members to board.—The board or commission shall be appointed by the governing body of the unit and shall consist of five or more members. After the governing body of the unit has determined the number of members to compose the recreation board or commission, a plan shall be worked out whereby at least one-third of the members shall serve for a term of one year; at least one-third for a term of two years and the remainder for a term of three years. Upon the expiration of their original terms of office, each succeeding term shall be for three years and until their successors qualify for office. Vacancies in the board or commission shall be filled for the unexpired term by appointment of the governing body of the unit. The members shall serve without compensation. Members, one of whom may represent the governing body of the unit, one the school system serving the unit, one the welfare department serving the unit, and one the health department serving the unit, may serve as ex-officio members of the recreation boards or commissions and may vote and perform the same duties as other members of the boards or commissions. The recreation board or commission at its first meeting shall appoint a chairman and such other officers as may be deemed proper for the conduct of its business and shall adopt rules and regulations to govern its procedures, and may adopt rules and regulations from time to time for the purpose of governing the use of parks, playgrounds, recreation centers and facilities. (1945, c. 1052; 1949, c. 1204; 1951, c. 126.)

Editor's Note.—The 1949 and 1951 amendments rewrote this section.

3 N. C.—20

§ 160-162. Power to accept gifts and hold property.—The recreation board or commission may accept any grant, lease, loan, or devise of real estate or any gift or bequest of money or other personal property, or any donation to be applied, principal or income, for either temporary, immediate or permanent recreational use; but if the acceptance of any grant or devise of real estate, or gift or bequest of money or other personal property will subject the unit to expense for improvement or maintenance, the acceptance thereof shall be subject to the approval of the governing body of such unit. Lands or devises, gifts or bequests, may be accepted and held subject to the terms under which such land or devise, gift or bequest, is made, given or received. (1945, c. 1052.)

§ 160-163. Petition for establishment of system and levy of tax; election.—A petition signed by at least fifteen per cent of the qualified and registered voters in the unit may be filed in the office of the clerk or other proper officer of such unit requesting the governing body of such unit to do any one or all of the following things:

(1) Provide, establish, maintain and conduct a supervised recreation system for the unit.

(2) Levy an annual tax of not less than three cents (3c) nor more than ten cents (10c) on each one hundred dollars of assessed valuation of the taxable property within such unit for providing, conducting and maintaining a supervised recreation system.

(3) Issue bonds of the unit in an amount specified therein and levy a tax for the payment thereof, for the purpose of acquiring, improving and equipping lands or buildings or both for parks, playgrounds, recreation centers and other recreational facilities.

When the petition is filed, it shall be the duty of the governing body of such unit to cause the question petitioned for to be submitted to the voters at a special election to be held in such unit within ninety days from the date of the filing, which election shall be held as now provided by law for the holding of general elections in such units.

If the proposition submitted at such election shall receive a majority vote of the qualified registered voters who shall vote thereon at such election, the governing body of the unit shall, by appropriate ordinance or resolution, put into effect such proposition as soon as practicable. (1923, c. 83, s. 8; 1945, c. 1052; 1951, c. 933, s. 1; C. S. 2776(h).)

Editor's Note.—The 1951 amendment deleted the words "except in all such elections a special registration shall be provided" formerly appearing at the end of the second paragraph in clause (3) and substituted "voters who shall vote thereon" in lieu of "electors" formerly appearing in the third line of the third paragraph of clause (3).

Cited in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702.

§ 160-163.1. Validation of bond elections.—All elections heretofore held approving the issuance of bonds under the authority of the Recreation Enabling Law are hereby ratified, approved, confirmed and validated. (1951, c. 933, s. 2.)

§ 160-164. Joint playgrounds or neighborhood recreation centers.—Any two or more units may jointly provide and establish, operate and conduct and maintain a supervised recreation system and

acquire, operate, improve and maintain property, both real and personal, for parks, playgrounds, recreation centers and other recreational facilities and activities, the expense thereof to be proportioned between the units participating as may to them seem just and proper. (1945, c. 1052.)

Art. 12A. Bird Sanctuaries.

§ 160-166.1. Municipalities authorized to create bird sanctuaries within their territorial limits.—From and after March 27, 1951, the governing body of any municipality in the State of North Carolina may, in its discretion, by ordinance, create and establish a bird sanctuary within the territorial limits of such municipality. Provided no ordinance of any governing body of any municipality adopted pursuant hereto may protect any birds classed as predatory by the wild life resources commission or by the General Statutes of North Carolina nor may the protection of such ordinance extend to pigeons, crows, starlings or English sparrows. (1951, c. 411, s. 1.)

§ 160-166.2. Penalty for violation.—Upon the creation and establishment of a bird sanctuary by any municipality in this State under the provisions of § 160-166.1, it shall be unlawful for any person to hunt, kill or trap any birds within the territorial limits of such municipality. Any person violating the provisions of an ordinance passed by any municipality under the provisions of § 160-166.1 shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than 30 days. (1951, c. 411, s. 2.)

Art. 14. Zoning Regulations.

§ 160-172. Grant of power.

Building Inspector Must Follow Literal Provisions of Regulations.—In the issuing of building permits the building inspector, a purely administrative agent, must follow the literal provisions of the zoning regulations. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128, 131.

Power to Zone Cannot Be Delegated.—The power to zone is conferred upon the governing body of the municipality and cannot be delegated to the board of adjustment. Hence a board of adjustment has no power either under this section or under ordinance to permit a type of business or building prohibited by the ordinance, for to do so would be an amendment of the law and not a variance of its regulations. *James v. Sutton*, 229 N. C. 515, 50 S. E. (2d) 300.

Variance and Nonconforming Buildings.—The privilege of erecting a nonconforming building or a building for a nonconforming use may not be granted under the guise of a variance permit, and action to that effect is in direct conflict with the general purpose and intent of the ordinance and does violence to its spirit. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128, 133.

Validity of Ordinance.—

A zoning ordinance covering all land within the municipality and separating commercial and industrial districts of the city from those set apart for residences, schools, parks, libraries, churches, etc., and which is uniform and operates alike on all territory within the respective zones, bears a reasonable relation to the health, safety, morals and general welfare of the entire community and is a valid and constitutional exercise of the delegated police power of the municipality. *Kinney v. Sutton*, 230 N. C. 404, 53 S. E. (2d) 306.

The fact that a lot would be more valuable if devoted to a nonconforming use does not deprive the owner of property without due process of law when the zoning regulations are uniform in their application to all within the respective districts, and the differentiation of the uses of property within the respective districts is in accordance with a comprehensive plan in the interest of the health, safety, morals or general welfare of the entire community. *Id.*

City May Limit Use of Property in Residential District.—This section authorizes municipalities to enact zoning or-

dinances prohibiting the use of property within a residential district for business or commercial purposes. *Kinney v. Sutton*, 230 N. C. 404, 53 S. E. (2d) 306.

Ordinance Held Not Discriminatory.—Provision of a zoning ordinance which permits commercial and industrial activities within a residential district provided such activities are carried on by members of the immediate family and not more than two persons are employed therein, does not render the ordinance void as being discriminatory, since the commercial activities permitted thereunder in a residential district are so intrinsically different from unlimited commercial and industrial activities in general as to permit their separate classification. *Kinney v. Sutton*, 230 N. C. 404, 53 S. E. (2d) 306.

Applied in *Kass v. Hedgpeth*, 226 N. C. 405, 38 S. E. (2d) 164.

§ 160-173. Districts.

Local Modification.—*Elizabeth City*: 1945, c. 301; town of *Asheboro*: 1947, c. 428; *Wake*: 1945, c. 532.

§ 160-175. Method of procedure.

Local Modification.—*Granville*: 1949, c. 598.

Effect of Noncompliance with Section.—Where original zoning ordinances, which did not include defendant's land within area prohibited for business structures, and amendment thereto which purported to do so, were not adopted in accordance with the enabling provisions of this and the following sections, such ordinances were invalid and ineffective as zoning regulations. *Kass v. Hedgpeth*, 226 N. C. 405, 38 S. E. (2d) 164, 165, citing *Eldridge v. Mangum*, 216 N. C. 532, 5 S. E. (2d) 721; *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128.

§ 160-178. Board of adjustment.—Such legislative body may provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years; provided, that such legislative body in the appointment of the original members of such board, or in the filling of vacancies caused by the expiration of the terms of the existing members of any such board, may make appointments of certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. Such legislative body may, in its discretion, appoint not more than two alternate members to serve on such board in the absence, for any cause, of any regular member. Such alternate member or members shall be appointed for the same term or terms as regular members, and shall be appointed in the same manner as regular members and at the regular times for appointment; provided, however, that in the case of the first appointment of alternate members subsequent to the effective date of this article the appointment shall be for a term which shall expire at the next time when the term of any regular member expires. Such alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be sub-

ject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. (1923, c. 250, s. 7; 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; C. S. 2776(x).)

Local Modification.—City of Winston-Salem: 1951, c. 157.
Cross Reference.—As to power of board of adjustment to permit nonconforming use, see note to § 160-172.

Editor's Note.—The 1947 amendment, effective March 18, 1947, inserted the second, third and fourth sentences.

The 1949 amendment inserted the words "not more than" in line thirteen. It also substituted the words "alternate member or" for the words "two alternate" in line fifteen.

Purpose of Section.—The plain intent and purpose of this section is to permit, through the board of adjustment, the amelioration of the rigors of necessarily general zoning regulations by eliminating the necessity for a slavish adherence to the precise letter of the regulations where, in a given case, little or no good on the one side and undue hardship on the other would result from a literal enforcement. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128, 132.

Section Grants No Legislative Power.—This section and § 160-172 do not grant to board of adjustment legislative authority, and therefore, board is without power to amend an ordinance under which it functions. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128.

Board Cannot Permit Nonconforming Use or Structure.—

Board of adjustment cannot permit type of business or building prohibited by zoning ordinance, for to do so would be an amendment of law and not a variance of its regulations. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128, 132.

But Can Merely "Vary" Regulations.—The board of adjustment cannot disregard the provisions of this article or regulations enacted in accordance with zoning law, but can merely "vary" them to prevent injustice when the strict letter of the provisions would work "unnecessary hardship." *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128, 132.

Who May Appeal from Order.—Any owner whose property is affected has the right to apply to the courts for review of an order of a municipal board of adjustment. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128.

Optionee.—Since an optionee has no present right to erect a building on the land, the withholding of a building permit from him cannot in law impose an "undue and unnecessary hardship" upon him as a predicate for relief from an order of a municipal board of adjustment. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128.

"Unnecessary hardship" as used in this section, does not mean a pecuniary loss to a single owner in being denied a building permit for a nonconforming structure pursuant to zoning regulations binding upon all alike. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128.

Same—Extent to Which Reviewable.—

The decisions of the board of adjustment are final, subject to the right of the courts to review errors in law and to give relief against its orders which are arbitrary, oppressive, or attended with manifest abuse of authority. *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128, 131.

Review of Questions of Fact.—

In accord with original. See *Lee v. Board of Adjustment*, 226 N. C. 107, 37 S. E. (2d) 128, 130.

Ordinances in Conflict with Section Are Void.—Municipal ordinances prescribing procedure for the enforcement of zoning regulations in conflict with those prescribed by this section are void, since this section contemplates that enforcement procedure shall be uniform. *Mitchell v. Barfield*, 232 N. C. 325, 59 S. E. (2d) 810.

§ 160-179. Remedies.

Section Applies Only to Regulations Passed under This Article.—The equitable remedy of injunction authorized applies only to the enforcement of zoning regulations promulgated under this article. *Clinton v. Ross*, 226 N. C. 682, 40 S. E. (2d) 593.

An ordinance prohibiting the operation of tobacco sales warehouses in certain sections of a municipality cannot be enforced by injunction under this section as to a warehouse in operation prior to the adoption of zoning regulations by the municipality even if the ordinance be deemed a part of the later adopted zoning regulations where zoning ordinance expressly excludes from its operation nonconforming uses existing prior to its adoption. *Id.*

A municipal corporation was held not to be estopped from enforcing a valid zoning regulation by obtaining an injunction under this section because of the conduct of its officials in permitting or even encouraging its violation by issuing a permit for a permissive use with knowledge that the owner intended to use it for a prohibited purpose or by acquiescing in such unlawful use over a period of years. *Raleigh v. Fisher*, 232 N. C. 629, 61 S. E. (2d) 897.

Cited in *Mitchell v. Barfield*, 232 N. C. 325, 59 S. E. (2d) 810.

§ 160-181.1. Article applicable to buildings constructed by state and its subdivisions.—All of the provisions of this article are hereby made applicable to the erection and construction of buildings by the State of North Carolina and its political subdivisions. (1951, c. 1203, s. 1.)

Art. 15A. Liability for Negligent Operation of Motor Vehicles.

§ 160-191.1. Municipality empowered to waive governmental immunity.—The governing body of any incorporated city or town, by securing liability insurance as hereinafter provided, is hereby authorized and empowered, but not required, to waive its governmental immunity from liability for any damage by reason of death, or injury to person or property, proximately caused by the neg-

ligent operation of any motor vehicle by an officer, agent or employee of such city or town when acting within the scope of his authority or within the course of his employment. Such immunity is waived only to the extent of the amount of the insurance so obtained. Such immunity shall be deemed to have been waived in the absence of affirmative action by such governing body. (1951, c. 1015, s. 1.)

Cross Reference.—For further provisions as to financing parking facilities, see §§ 160-497 through 160-507.

§ 160-191.2. Contract of insurance; payment of premiums.—The contract of insurance purchased pursuant to this article must be one issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State, and must by its terms adequately insure such city or town against any and all liability for any damage by reason of death, or injury to person or property, proximately caused by the negligent operation of any motor vehicle by an officer, agent or employee of such city or town when acting within the scope of his authority or within the course of his employment. Any company or corporation which enters into a contract of insurance as above described with an incorporated city or town, by such act, waives any defense based upon the governmental immunity of the incorporated city or town from liability.

Every incorporated city and town is authorized and empowered to pay, as a necessary expense, the lawful premiums for such insurance out of the general tax revenues or other appropriate funds of such incorporated city or town. (1951, c. 1015, s. 2.)

§ 160-191.3. Action for negligence in performance of governmental, etc., function authorized; other defenses not affected.—Any person sustaining damage, or in case of death, his personal representative, may sue an incorporated city or town insured as provided by this article for the recovery of such damages in any court of competent jurisdiction in this State, in the county where such city or town is located; and it shall be no defense to any such action that the operation of such motor vehicle by such officer, agent or employee, was in pursuance of a governmental, municipal, or discretionary function of said city or town if, and to the extent, such city or town has insurance coverage as provided by this article.

Except as hereinbefore expressly provided, nothing in this article shall be construed to deprive any city or town of any defense whatsoever to any such action for damages, or to restrict, limit or otherwise affect any such defense, which said city or town may have at common law or by virtue of any statute (whether general, special, private or local); and nothing in this article shall be construed to relieve any person sustaining damages, or any personal representative of any decedent, from any duty to give notice of such claim to the incorporated city or town, or to commence any civil action for the recovery of damages, within the applicable period of time prescribed or limited by statute. (1951, c. 1015, s. 3.)

§ 160-191.4. Municipality liable only upon claims arising after procurement of insurance.—An incorporated city or town may incur liability pursuant to this article only with respect to a claim arising

after such city or town has procured liability insurance pursuant to this article and during the time when such insurance is in force. (1951, c. 1015, s. 4.)

§ 160-191.5. Knowledge of insurance to be kept from jury.—No part of the pleadings which relate to or alleges facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this article. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall ask for a jury trial thereon.

No plaintiff to an action brought pursuant to this article nor counsel, nor witness therefor, shall make any statement, ask any question, read any pleadings or do any other act in the presence of the trial jury in such case so as to indicate to any member of the jury that the defendant's liability would be covered by insurance, and if such is done order shall be entered of mistrial. (1951, c. 1015, s. 5.)

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

Art. 17. Organization under the Subchapter.

§ 160-195. Municipal board of control; changing name of municipality.

Where the complaint contains no allegation that the Board of Municipal Control has failed to observe and follow the requirements of the statutes and no allegation that the said board has acted capriciously or in bad faith, in a civil action to restrain the execution of an order changing the name of a town, demurrer to the complaint for failure to state a cause of action was properly sustained, and there was no error in the court's dissolving a restraining order theretofore granted and dismissing the action. *Hunsucker v. Winborne*, 223 N. C. 650, 27 S. E. (2d) 817.

Cited in *Burnsville v. Boone*, 231 N. C. 577, 58 S. E. (2d) 351.

§ 160-197. Petition filed.

Upon the hearing by the Board of Municipal Control of a petition to change the name of a town, the board has power to investigate and determine whether or not the requirements of this and the following section have been complied with. *Hunsucker v. Winborne*, 223 N. C. 650, 27 S. E. (2d) 817.

§ 160-198. Hearing of petition and order made.

3. Election of officers provided for. The board of control shall provide for the place of holding the first election for mayor and commissioners; and shall designate how many commissioners shall serve, as set forth in subchapter I of this chapter, naming the number of commissioners, not less than three nor more than seven. The election of mayor and commissioners shall be under the same laws as now govern the election of mayor and commissioners in subchapter I of this chapter. The board of control shall appoint a registrar and two judges of election to hold the first election for mayor and commissioners and make such order as may be deemed proper and necessary for the holding of said first election and the certification of persons elected as mayor and commissioners. The list of the names of qualified voters attached

to the petition shall be treated as the registration of qualified voters for said election, but the board may provide for the registration of any other qualified voters in the territory on or before the day of election.

(1949, c. 1083.)

Editor's Note.—The 1949 amendment added the last two sentences of subsection 3. As the rest of the section was not changed by the amendment only subsection 3 is set out.

See annotations under § 160-197.

Art. 18. Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

§ 160-200. Corporate powers.

5. To create, provide for, construct, regulate, and maintain all things in the nature of public works, buildings, and improvements, including public libraries and equipment for the same.

25. To create and administer a special fund for the relief of indigent and helpless members of the police and fire departments who have become superannuated, disabled, or injured in such service, and receive donations and bequests in aid of such fund and provide for its permanence and increase, and to prescribe and regulate the conditions under which, and the extent to which, the same shall be used for the purpose of such relief. Also, to insure policemen, firemen, or any class of city employees against death or disability, or both, during the term of their employment under forms of insurance known as group insurance; the amount of benefit on the life of any one person not to exceed the sum of two thousand dollars, and the premiums on such insurance to be payable out of the current funds of the municipality. If and when the Congress of the United States amends the Federal Social Security Act so as to extend its provisions to include municipal employees, each municipality is hereby authorized to take such action or to appropriate such funds as are necessary to enlist their employees therein.

31. To provide for the regulation, diversion, and limitation of pedestrians and vehicular traffic upon public streets, highways, and sidewalks of the city and to regulate and limit vehicular parking on streets and highways in congested areas.

In the regulation and limitation of vehicular traffic and parking in cities and towns the governing bodies may, in their discretion, enact ordinances providing for a system of parking meters designed to promote traffic regulation and requiring a reasonable deposit (not in excess of five cents per hour) from those who park vehicles for stipulated periods of time in certain areas in which the congestion of vehicular traffic is such that public convenience and safety demand such regulation. The proceeds derived from the use of such parking meters shall be used exclusively for the purpose of making such regulation effective and for the expenses incurred by the city or town in the regulation and limitation of vehicular parking, and traffic relating to such parking, on the streets and highways of said cities and towns. Nothing contained in chapter two, section twenty-nine, of the Public Laws of one thousand nine hundred and twenty-one, or in section sixty-one of chapter four hundred and seven of the Public Laws of one thousand nine hundred and thirty-seven shall

be construed as in any way affecting the validity of these parking meters or the fees required in the use thereof.

The governing authorities of all cities and towns of North Carolina shall have the power to own, establish, regulate, operate and control municipal parking lots for parking of motor vehicles within the corporate limits of cities and towns. Cities and towns are likewise hereby authorized, in their discretion, to make a charge for the use of such parking lots.

32. To regulate the emission of smoke within the city but no regulation relative to the emission of smoke shall extend to the acts of an employee or servant of a railroad company in making necessary smoke when stoking or operating a coal burning locomotive.

36a. To require that drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets of any city or town, make application to and receive from the governing board of any such city or town a driver's or operator's permit before operating or driving any such vehicle. The governing board may refuse to issue such permit to any person who has been convicted of: a felony; a violation of any federal or state statute relating to the use, possession, or sale of intoxicating liquors; any federal or state statute relating to prostitution; any federal or state statute relating to the use, possession, or sale of narcotic drugs; or to any person who is not a citizen of the United States; or to any person who is a habitual user of intoxicating liquors or narcotic drugs; or to a person who has been a habitual violator of traffic laws or ordinances.

The governing body may revoke any such driver's or operator's permit if the person holding such permit is convicted of: a felony; or violation of any federal or state statute relating to the possession or sale of intoxicating liquors; or violation of any federal or state statute relating to prostitution; or any federal or state statute relating to the use, possession or sale of narcotic drugs; or repeated violations of traffic laws or ordinances; or becomes a habitual user of intoxicating liquors or narcotic drugs.

The governing body may also require operators and drivers of taxicabs to prominently post and display in each taxicab, so as to be visible to the passengers therein, permit, rates and/or fares, fingerprints, photographs, and such other identification matter as deemed proper and advisable. The governing body is also authorized to establish the rates which may be charged by taxicab operators, and may grant franchises to taxicab operators on such terms as it deems advisable.

(1945, c. 564, s. 2; 1947, c. 7; 1949, cc. 103, 352; c. 594, s. 2.)

Local Modification.—Cherokee: 1951, c. 216; Guilford: 1945, c. 251; Surry: 1947, c. 178; town of Bryson City: 1947, c. 655; city of Greensboro: 1947, c. 392; city of Kings Mountain in Cleveland county, as to subsec. 31: 1951, c. 626; city of Roanoke Rapids: 1949, c. 3; city of Salisbury: 1947, c. 241; town of Warrenton, in Warren county, as to (31): 1951, s. 631; city of Winston-Salem: 1947, c. 392; cities and towns in Halifax, as to subsection 25: 1949, c. 1123.

Editor's Note.—The 1945 amendment added the last sentence of subsection 36a. Prior to the 1947 amendment the second paragraph of subsection 31 was not applicable to municipalities of 20,000 or less.

The first 1949 amendment added the last sentence of sub-

section 25. The second 1949 amendment added at the end of subsection 5 the words "including public libraries and equipment for the same." And the third 1949 amendment re-wrote subsection 32. As the rest of the section was not affected by the amendments it is not set out.

Session Laws 1945, c. 176, made subsections 35, 36 and 36a of this section applicable to the Town of Rockingham in Richmond county.

For acts relating to parking meters in certain localities not affected by chapters 20 and 136 of the General Statutes, see Session Laws 1947, c. 54 (city of Shelby); c. 66 (town of Laurinburg); c. 675 (city of Statesville); c. 735 (town of Mooresville); c. 1035 (Cabarrus county). And see Session Laws 1949, c. 573, relating to the city of Statesville.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 358.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 474.

Charter provisions are supplemented by our general statutes. Under the power thus conferred the municipal authorities are the sole judges of the necessity or expediency of exercising that right. *Parsons v. Wright*, 223 N. C. 520, 523, 27 S. E. (2d) 534.

Municipal corporations have no inherent police powers and can exercise only those conferred by this section and such powers as are conferred are subject to strict construction. *Kass v. Hedgpath*, 226 N. C. 405, 38 S. E. (2d) 164, 165.

Sunday Ordinances.—By virtue of this section the power to enact Sunday ordinances has been delegated to the municipalities of the state. *State v. Trantham*, 230 N. C. 641, 55 S. E. (2d) 198.

Licensing of Taxicab Drivers.—The legislature has deemed it to be the part of wisdom to delegate to the various municipalities of the state the power to license, regulate and control the operators and drivers of taxicabs. In the exercise of this delegated power, it is the duty of the municipal authorities, in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town; and when in the exercise of such discretion an ordinance is adopted, it is presumed to be valid; and, the courts will not declare it invalid unless it is clearly shown to be so. *State v. Stallings*, 230 N. C. 252, 52 S. E. (2d) 901; *Victory Cab Co. v. Shaw*, 232 N. C. 138, 59 S. E. (2d) 573.

City May Require Drivers to Wear Distinctive Insignia.—It is not an unlawful, unreasonable or an arbitrary exercise of the police power which has been delegated to local municipal authorities by the legislature, for a city to require, as a condition incident to the privilege of operating a taxicab on its streets, that the driver of such taxicab shall wear a distinctive cap or other insignia while operating a taxicab, to show that he is a duly licensed taxicab driver. Such a requirement would seem to be reasonable and a protection to the public against unlicensed drivers or operators. *State v. Stallings*, 230 N. C. 252, 52 S. E. (2d) 901.

Cited in *Suddreth v. Charlotte*, 223 N. C. 629, 27 S. E. (2d) 650.

§ 160-203.1. Powers over cemetery outside corporate limits.—Any incorporated city or town which owns a cemetery situated outside the corporate limits of said city or town is hereby authorized to exercise the same powers in the same manner and to the same extent with respect to such cemetery as if such cemetery were located within the corporate limits thereof. (1951, c. 1044.)

Cross Reference.—As to care of cemeteries, see §§ 160-258 to 160-260.

Part 2. Power to Acquire Property.

§ 160-204. Acquisition by purchase.

Section Confers Power of Extraterritorial Condemnation.—This and the following section expressly confer the power of extraterritorial condemnation where municipality has right to acquire property. *Charlotte v. Heath*, 226 N. C. 750, 40 S. E. (2d) 600, 169 A. L. R. 569.

§ 160-205. By condemnation.

Condemnation for Pipe Lines Outside of City Limits.—The city of Charlotte was authorized by its charter to extend its public services, including that of water and sewerage, to those living beyond the city limits, and to acquire the facilities used for said purposes, including pipe lines, and this right being existent, under this section city

had the right to exercise its power of eminent domain to condemn lands and property rights for said purposes. *Charlotte v. Heath*, 226 N. C. 750, 40 S. E. (2d) 600, 169 A. L. R. 569.

§ 160-207. Order for condemnation of land; assessment districts; maps and surveys; hearing.

Cited in *Parsons v. Wright*, 223 N. C. 520, 27 S. E. (2d) 534.

Part 3. Streets and Sidewalks.

§ 160-222. Power to make, improve and control.

Cross Reference.—As to power of municipal governing body to close streets, etc., see subsection 17 of § 153-9.

§ 160-226. Maps of streets and sidewalks in subdivisions within one mile of city or town limits to be approved by such city or town.

As to control corners in real estate developments, see §§ 39-32.1 to 39-32.4.

Part 5. Protection of Public Health.

§ 160-229. Ordinances for protection of health; contracts for medical treatment and hospitalization of poor.

The provisions of this paragraph shall not apply to the municipalities of Salisbury, Spencer, East Spencer, Rocky Mount, Leaksville, Madison, Asheville, Charlotte, Gibsonville, Greensboro, Hamlet, High Point, Jamestown, Rockingham, Tarboro and Wilmington. This paragraph shall not apply to the city of High Point in Guilford county; to the city of Elizabeth City in Pasquotank county; nor to the counties of Beaufort, Camden and Lee or any city or town therein; nor to any city or town in the counties of Ashe, Avery, Columbus, Davidson, Durham, Gates, Jackson, Martin and Rockingham, save and except the city of Reidsville; nor to the counties of Ashe, Alexander, Brunswick, Clay, Cumberland, Forsyth, Haywood, Henderson, Jones, Macon, Montgomery, Moore, Pasquotank, Robeson, Transylvania, Wilkes, Catawba, Lincoln, Surry, Washington, Rowan, Warren, Vance, Johnson, Edgecombe, Halifax, Davie, Gaston, Harnett, Iredell, Pitt, Stanly, Union and Yadkin. Before this paragraph shall apply to any city or town in Catawba county it must be submitted to a vote of the people of said Catawba county. (1917, c. 136, sub-ch. 5, s. 4; 1935, c. 64; 1943, c. 215; 1947, cc. 101, 160; C. S. 2795.)

Editor's Note.—The first 1947 amendment struck out "Edenton" from the list of municipalities in the third sentence from the end of the section. The second 1947 amendment struck out "Sampson" from the list of counties in the next to last sentence. Only the last three sentences of the section are set out.

Cited in *Brumley v. Baxter*, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930.

§ 160-230. Establish hospitals, pesthouses, quarantine, etc.

Editor's Note.—Chapter 1081 of Session Laws 1949, which amended §§ 160-417 to 160-421 and struck out § 160-423, reenacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

Part 6. Fire Protection.

§ 160-238. Fire protection for property outside city limits; injury to employee of fire department.

Any employee of a municipal fire department, while engaged in any duty or activity in connection with the provisions of this section, or pursuant to orders or instructions from his officers or superiors, shall have the same rights under the workmen's compensation law, and shall be entitled to

all such other rights, privileges, exemptions and immunities, as if such duty or activity were performed within the corporate limits of the municipality by which he was employed; and all such employees shall be entitled to all such rights, privileges, immunities and exemptions, irrespective of where such duties or activities are performed. In authorizing or permitting its fire department to answer fire calls outside the twelve-mile limit, and in answering such calls, the municipality and its employees in the fire department shall be considered as acting in a governmental capacity. (1919, c. 244; 1941, c. 188; 1947, c. 669; 1949, c. 89; C. S. 2804.)

Editor's Note.—

The 1947 amendment added the above paragraph as the second paragraph of this section, and the 1949 amendment rewrote the paragraph. As the first paragraph was not changed it is not set out.

Part 7. Sewerage.

§ 160-240. Require connections to be made.

Section Does Not Apply to Property Located Outside City.—A municipality is not authorized by this section to compel owners of improved property located outside the city, but which may be located upon or near one of its sewer lines, or a line which empties into the city's sewerage system, to connect with the sewer line. *Atlantic Constr. Co. v. Raleigh*, 230 N. C. 365, 53 S. E. (2d) 165. See § 160-256 and note.

§ 160-249. Authority to fix sewerage charges; lien thereof.

Charges for Sewer Service Outside Corporate Limits.—A city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper. *Atlantic Constr. Co. v. Raleigh*, 230 N. C. 365, 53 S. E. (2d) 165.

Part 8. Water and Lights.

§ 160-255. Establish and maintain water and light plants.

City May Impose Conditions on Residents Outside Corporate Limits. — "Since it is optional with a city as to whether or not it will furnish water to residents outside its corporate limits and permit such residents to connect their sewer facilities with the sewerage system of the city, or with any other sewerage system which connects with the city system, it may fix the terms upon which the service may be rendered and its facilities used. G. S. 160-255; G. S. 160-256; *Kennerly v. Dallas*, 215 N. C. 532, 2 S. E. (2d) 538; *Williamson v. High Point*, 213 N. C. 96, 195 S. E. 90; *George v. Asheville*, 80 F. (2d) 50, 103 A. L. R. 568." *Atlantic Constr. Co. v. Raleigh*, 230 N. C. 365, 53 S. E. (2d) 165.

§ 160-256. Fix and enforce rates.

Cited in *Atlantic Constr. Co. v. Raleigh*, 230 N. C. 365, 53 S. E. (2d) 165.

Part 9. Care of Cemeteries.

§ 160-258. Care fund established.

Cross Reference.—As to power over cemetery outside corporate limits, see § 160-203.1.

§ 160-260.1. Right to condemn and take over cemeteries adjoining municipal cemeteries.—When, in the opinion of the governing authority of any city or town, it is deemed advisable and desirable to acquire and take over any cemetery, graveyard or burial place adjoining any cemetery heretofore established by any city or town, then such governing authority of said city or town shall have the right to take over or acquire by condemnation or the right of eminent domain such adjoining cemetery, graveyard or burial place and in the acquisition of such adjoining cemetery, graveyard or burial place, the governing authority of any city or town shall exercise such authority according to

the procedure and rights set forth in Article 1 and Article 2 of Chapter 40 of the General Statutes entitled "Eminent Domain", as amended. The governing authority of such city or town shall have the right to acquire the title in fee simple to such adjoining cemetery, graveyard or burial place, and, in addition, shall have the right to establish perpetual care for such adjoining cemetery or cemeteries, including the right to adopt rules and regulations for decorating and beautifying said cemeteries, establishing walkways, care of graves and any and all other things necessary to be done for the care, preservation and upkeep of such cemeteries. As used in this section, the word "adjoining" shall be construed to mean not only cemeteries immediately adjacent to, bordering on or contiguous to the boundaries of a cemetery already established by a city or town but also shall include other cemeteries, graveyards and burial places which are immediately connected together successively or in a series of contiguous tracts or boundaries, and which when taken together constitute one unified body or tract of land. (1951, c. 385, s. 1.)

Editor's Note.—Section 2½ of the act inserting this and the following section provides that it "does not apply to any cemetery to which Article 7 of Chapter 65 of the General Statutes is applicable."

§ 160-260.2. Right to condemn easement for perpetual care.—In lieu of acquiring by condemnation a title in fee simple to the adjoining cemeteries as set forth in § 160-260.1, the governing authorities of said cities or towns shall have the right to condemn or acquire an easement or privilege for the purpose of establishing a system of perpetual care for such adjoining cemeteries. In condemning or acquiring such easement or privilege, the authority and procedure conferred by Articles 1 and 2 of Chapter 40 of the General Statutes entitled "Eminent Domain", as amended, shall be used for such purpose and shall be applicable to the exercise of the acquisition of the easement or privilege herein established. The proceedings under this section shall be limited to the acquisition of an easement or privilege for establishing perpetual care of such adjoining cemeteries, and the governing authority of any city or town exercising such rights shall have the authority to make reasonable rules and regulations for the decoration, adornment and upkeep of said adjoining cemeteries and to establish a perpetual care system or plan for such purpose. The word "adjoining", as used in this section, shall be construed and defined in the same way and manner as construed and defined in § 160-260.1. The governing authority of any city or town shall have the right to discontinue or take a nonsuit in such condemnation proceedings, whether exercised under § 160-260.1 or under this section, at any time prior to the entering of said final order or decree in such proceedings. Any condemnation proceedings instituted under this section shall not divest any person, firm or corporation of any title held in fee simple but shall confer upon the governing authority of such city or town the right to establish perpetual care as herein set forth. The authority to acquire such adjoining cemeteries as set forth in § 160-260.1, as well as the authority to acquire the easement or privilege set forth in this section, and the exercise of same, are declared to be for a public

purpose, and the governing authority of such city or town is authorized to expend public funds for such acquisition and for such perpetual care. (1951, c. 385, s. 2.)

Art. 19. Exercise of Powers by Governing Body.

Part 2. Ordinances.

§ 160-272. How ordinance pleaded and proved.

Where the ordinances of a city have not been published in book form, it is necessary in order to prove the existence of an ordinance, over an objection, to produce by the proper official the official records of the city or town, showing its passage and the entry on the records of the ordinance itself. *Toler v. Savage*, 226 N. C. 208, 37 S. E. (2d) 485, 486, citing *State v. Razook*, 179 N. C. 708, 103 S. E. 67.

Part 3. Officers.

§ 160-273. City clerk elected; appointment of deputy clerk; powers and duties.—The governing body shall, by a majority vote, elect a city clerk to hold office for the term of two years and until his successor is elected and qualified. He shall have such powers and perform such duties as the governing body may from time to time prescribe in addition to such duties as may be prescribed by law. He shall keep the records of the meetings. The person holding the office of city clerk at the time when any of the plans set forth in this subchapter shall be adopted by such city shall continue to hold office for the term for which he was elected, and until his successor is elected and qualified. The governing body shall also have the authority to appoint a deputy city clerk to act during the absence or disability of the city clerk, and may assign to said deputy the same powers, authority, and duties as are assigned to the city clerk.

(1949, c. 14.)

Editor's Note.—The 1949 amendment added the last sentence of the first paragraph. As the second paragraph was not changed by the amendment it is not set out.

§ 160-277. Bonds required.—Every official, employee, or agent of any city who handles or has custody of more than one hundred dollars of such city's funds at any time shall, before assuming his duties as such, be required to enter into bond with good sureties, in an amount sufficient to protect such city, payable to such city, and conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands, custody, or control, which bond shall be approved by the mayor and board of aldermen or other governing body and deposited with the city, except that such bond of any employee or employees may, in the discretion of the mayor and governing body, be conditioned only upon a true accounting for funds of the city. (1917, c. 136, sub-ch. 13, s. 15; 1945, c. 619; C. S. 2828.)

Editor's Note.—The 1945 amendment added the exception clause at the end of the section.

Part 4. Contracts Regulated.

§ 160-280. Separate specifications for contracts; responsible contractors; liability of separate contractors.

Each separate contractor shall be directly liable to the county or city and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifi-

cally set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording, "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with any county or city for the erection, construction or alteration of any building or buildings. (1925, c. 141, s. 1; 1929, c. 339, s. 1; 1931, c. 46; 1943, c. 387; 1945, c. 852.)

Editor's Note.—

The 1945 amendment added the above paragraph at the end of the section. As the rest of the section was not affected by the amendment it is not set out.

§ 160-281.1. Validation of conveyances by cities, towns, school districts, etc.—All conveyances and sales of real estate made prior to January 1, 1942, by the governing body of any city, town, school district, or school administrative unit by private sale without notice and public outcry shall be valid and cured of any such defects and any city, town, school district or school administrative unit affected hereby shall have six months from the date of the ratification of this section to assert any claim it may have by reason of such defects or it will thereafter be forever barred. (1951, c. 44.)

Editor's Note.—This section was ratified on February 9, 1951.

Part 5. Control of Public Utilities, Institutions, and Charities.

§ 160-282. Power to establish and control public utilities, institutions, and charities.

Cited in *Brumley v. Baxter*, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930.

§ 160-284. Ordinances to regulate management.

Rates for Sewer Service Outside Corporate Limits.—A city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper. *Atlantic Constr. Co. v. Raleigh*, 230 N. C. 365, 53 S. E. (2d) 165.

Art. 21. Adoption of New Plan of Government.

Part 2. Manner of Adoption.

§ 160-296. Petition filed.

Local Modification.—City of Fayetteville: 1945, c. 120.

Art. 22. Different Forms of Municipal Government.

Part 4. Plan "D." Mayor, City Council, and City Manager.

§ 160-340. Number and election of city councils.

Local Modification.—City of Fayetteville (effective on approval by voters): 1951, c. 131, s. 1.

§ 160-345. Election of mayor.

Local Modification.—City of Fayetteville (effective on approval by voters): 1951, c. 131, s. 2.

§ 160-346. Salaries of mayor and council.—The mayor shall receive for his services such salary as the city council shall by ordinance determine, not exceeding eighteen hundred dollars a year, and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected. The council may, by a vote of not less than three members, taken by call of the yeas and nays, establish a salary for its members not exceeding six hundred dollars a year for each. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the

increase is voted. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 10; 1951, c. 153, s. 1; C. S. 2895.)

Editor's Note.—The 1951 amendment increased the maximum salary of mayor from seven hundred to eighteen hundred dollars a year, and that of a council member from two hundred to six hundred dollars a year.

§ 160-347. Election of treasurer; salary.—The mayor and council may elect from their membership a treasurer by the method outlined above, and in addition to the salary allowed as a member of the council, such treasurer may be paid for his services as treasurer not exceeding nine hundred dollars per annum. (1935, c. 180; 1951, c. 153, s. 2.)

Editor's Note.—The 1951 amendment increased the maximum salary from three hundred to nine hundred a year.

Local Modification.—City of Fayetteville: 1947, c. 41.

§ 160-349. Power and duties of manager.

Local Modification.—City of Fayetteville: 1947, c. 41.

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

Art. 28. Permanent Financing.

§ 160-378. For what purpose bonds may be issued.

No interest accruing after the year one thousand nine hundred forty-six shall be funded or refunded. (1917, c. 138, s. 16; 1919, c. 178, s. 3 (16); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 48; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1939, c. 231, s. 1; 1943, c. 13; 1945, c. 403; C. S. 2937.)

Local Modification.—Town of Columbus: 1949, c. 987; town of Walnut Cove: 1949, c. 987.

Editor's Note.—

The 1945 amendment substituted "forty-six" for "forty-two" in the last sentence. As the rest of the section was not affected by the amendment it is not set out.

§ 160-379. Ordinance for bond issue.

(2) If the issuance of the bonds is required by the constitution to be approved by the voters, or if the governing body, although not required to obtain the approval of the voters before issuing the bonds, deems it advisable to obtain such approval, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this subchapter; or

(1949, c. 497, s. 3.)

Editor's Note.—The 1949 amendment rewrote subdivision (2) of clause e of subsection 2. As the rest of the section was not changed, only the said subdivision (2) is set out.

§ 160-383. Sworn statement of indebtedness.

Local Modification.—Columbus, town of Whiteville: 1947, c. 42.

§ 160-387. Elections on bond issue.

1. What Majority Required.—If a bond ordinance provides that it shall take effect when approved by the voters of the municipality, the affirmative vote of a majority of those who shall vote on the bond ordinance shall be required to make it operative.

(1949, c. 497, s. 4.)

Editor's Note.—The 1949 amendment, effective March 22, 1949, rewrote subsection 1. As the rest of the section was not affected by the amendment it is not set out. Section 7 of the amendatory act made it retroactive as to elections held subsequent to November 24, 1948. See § 153-92.1.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 454.

§ 160-389. Within what time bonds issued.

Notwithstanding the foregoing limitation of

time which might otherwise prevent the issuance of bonds, bonds authorized by an ordinance which took effect prior to July 1st, 1950, and which have not been issued by July 1st, 1951, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1953, unless such ordinance shall have been repealed, and any loans made under authority of § 160-375 of article 27 of this chapter in anticipation of the receipt of the proceeds of the sale of such bonds, or any renewals thereof, may be paid on or at any time prior to but not later than June 30th, 1953, notwithstanding the limitation of time for payment of such loans as contained in said section. (1917, c. 138, s. 24; 1919, c. 178, s. 3 (24); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1939, c. 231, s. 1; 1947, c. 510, s. 2; 1949, c. 190, s. 2; 1951, c. 439, s. 2; C. S. 2950.)

Editor's Note.—

The 1947 amendment added the above paragraph at the end of this section, and the 1949 and 1951 amendments changed the dates therein. As the rest of the section was not affected by the amendments it is not set out.

For a brief comment on the 1947 amendment, see 25 N. C. Law Rev. 453.

§ 160-390. Amount and nature of bonds determined.—The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, not exceeding six per centum per annum, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. The bonds authorized by a bond ordinance, or by two or more bond ordinances if the bonds so authorized shall be consolidated into a single issue, may be issued either all at one time as a single issue or from time to time in series, and different provisions may be made for different series. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; C. S. 2951.)

Editor's Note.—The 1951 amendatory act, effective March 28, 1951, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

§ 160-391. Bonded debt payable in installments.

—The bonds of each issue or of each series shall mature in annual installments, the first of which installments shall be made payable not more than three years after the date of the bonds of such issue or of such series, and the last within the period determined and declared pursuant to § 160-382 of this subchapter. If the bonds so authorized shall be issued at one time as a single issue, no such installment shall be more than two and one-half times as great in amount as the smallest prior installment of such issue. If the bonds so authorized shall be issued in series, the total amount outstanding after the issuance of any particular series shall mature so that the total amount of such bonds maturing in any fiscal year shall not be more than two and one-half times as great in amount as the smallest amount of such outstanding bonds which mature in any prior fiscal year, and the first installment of the bonds of any series subsequent to the first series may mature more than three years after the date of the bonds of the first series. This section shall not apply to funding or refunding bonds. (1917, c.

138, s. 26; 1919, c. 178, s. 3 (26); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 52; 1933, c. 259, s. 1; 1951, c. 440, s. 2; C. S. 2952.)

Editor's Note.—

The 1951 amendment rewrote this section.

The 1951 amendatory act, effective March 28, 1951, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

Art. 29. Restrictions upon the Exercise of Municipal Powers.

§ 160-402. Limitation of tax for general purposes.—For the purpose of raising revenue for defraying the expenses incident to the proper government of the municipality, the governing body shall have the power and it is hereby authorized to levy and collect an annual ad valorem tax on all taxable property in the municipality at a rate not exceeding one dollar and fifty cents (\$1.50) on the one hundred dollar (\$100.00) valuation of said property, notwithstanding any other law, general or special, heretofore or hereafter enacted, except a law hereafter enacted expressly repealing or amending this section. (1917, c. 138, s. 37; 1919, c. 178, s. 3 (37); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; C. S. 2963.)

Local Modification.—Town of Nashville: 1945, c. 122; town of Raeford: 1949, c. 134; town of Warrenton: 1951, c. 108.

Editor's Note.—

The 1947 amendment increased the maximum rate from \$1.00 to \$1.50 on the one hundred dollar valuation of property, and omitted the former proviso relating to certain cities.

Cited in *Burnsville v. Boone*, 231 N. C. 577, 58 S. E. (2d) 351.

SUBCHAPTER IV. FISCAL CONTROL.

Art. 33. Fiscal Control.

§ 160-410. Terms in county fiscal control act made applicable to cities and towns.

Monday shall mean the first regular meeting day of the governing body of a municipality on or after the Monday mentioned in the county fiscal control act. (1931, c. 60, s. 67; 1945, c. 203.)

Editor's Note.—The 1945 amendment added the above sentence at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Art. 34. Revenue Bond Act of 1938.

§ 160-413. Title of article.

Editor's Note.—Session Laws 1945, c. 333, extended the operation of this article as to New Hanover county and any municipality therein until March 1, 1949.

Session Laws 1949, c. 1081, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted this article in its entirety as so amended.

§ 160-414. Definitions.—Wherever used in this article, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall include the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:

(1) Airports, docks, piers, wharves, terminals and other transit facilities, abattoirs, armories, auditoria, community buildings, cold storage plants, gymnasia, markets, stadia, swimming pools, hospitals, processing plants and sea products, warehouses, highways, causeways, parkways, viaducts, bridges, and other crossings, teacherages or homes for teachers of public schools, school

dormitories and teacherages, club houses and golf courses, and parking facilities.

(2) Systems, plants, works, instrumentalities, and properties: (i) used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses, (ii) used or useful in connection with the collection, treatment, and disposal of sewage, garbage, waste and storm water, (iii) used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private uses, together with all parts of any such undertaking and all appurtenances thereto including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, plants for the incineration of garbage, intercepting sewers, trunk connection and other sewer and water mains, filtration works, pumping stations, and equipment.

(b) The term "municipality" as used in this article shall mean any county, city, town, incorporated village, or sanitary district of this state now or hereafter incorporated.

(c) The term "governing body" shall mean the board or body in which the general legislative powers of the municipality are vested.

(d) The term "parking facilities" shall mean and shall include lots, garages, parking terminals or other structures (either single or multi-level and either at, above or below the surface) to be used solely for the off-street parking of motor vehicles, open to public use for a fee, including on-street parking meters if so provided by the governing body, and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or the operation thereof. The term "cost" as applied to parking facilities or to extensions thereto shall include the cost of acquisition, construction, reconstruction, improvement, betterment, or extension, the cost of all labor, materials, machinery and equipment, the cost of all lands, easements, rights in lands and interests acquired by the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, and may include, in addition to the items of cost specified in § 160-416 of the General Statutes, financing charges, cost of plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, improvement, betterment or extension, the financing thereof and the placing of the parking facilities in operation. (Ex. Sess., 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1.)

Editor's Note.—

The 1951 amendment made this section applicable to "parking facilities".

§ 160-415. Additional powers.

(c) to prescribe, revise, and collect (such collection, in the case of parking facilities, to be made by the use of parking meters therein, if deemed desirable by the governing body) rates, fees, tolls,

or charges for the services, facilities, or commodities furnished by such undertaking; and in anticipation of the collection of the revenues of such undertaking, to issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(f) to lease all or any part of any undertaking upon such terms and conditions and for such term of years as the governing body may deem advisable to carry out the provisions of this article;

(g) in the case of authorizing and issuing bonds for parking facilities, to install parking meters, or cause the same to be installed, at or near the curbs of the streets within the municipality and to adopt such regulations and impose such charges in connection with any such parking meters heretofore or hereafter installed as it may deem advisable, and to combine into a single undertaking for financing purposes and for the more adequate regulation of traffic and relief of congestion such parking meters or any portion thereof with any parking facilities financed by revenue bonds issued under the provisions of this article and to pledge to the payment of such revenue bonds all or any part of the revenues derived from such parking meters. (Ex. Sess., 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3.)

Editor's Note.—The 1951 amendment inserted the parenthetical clause immediately following the word "collect" in line one of subsection (c) and added subsections (f) and (g). As the rest of the section was not changed only these subsections are set out.

§ 160-417. Bond provisions.—Revenue bonds may be issued under this article in one or more series; may bear such date or dates, may mature at such time or times, not exceeding thirty-five years from their respective dates; may bear interest at such rate or rates, not exceeding six per centum (6%) per annum, payable at such time or times; may be payable in such medium of payment; at such place or places; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner, and may contain such terms, covenants, assignments, and conditions as the resolution or resolutions authorizing the issuance of such bonds may provide. All bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding notwithstanding that before the delivery thereof and payment therefor, such officers whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Said bonds and coupons and said interim receipts shall be negotiable for all purposes, except as restricted by registration, and shall be and are hereby declared to be nontaxable for any and all purposes. (Ex. Sess., 1938, c. 2, s. 5; 1949, c. 1081.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 160-421. Approval of state agencies and sale

of bonds by local government commission.—All revenue bonds issued pursuant to this article shall be approved and sold by the local government commission in the same manner as municipal bonds are approved and sold by that commission, except that the said commission may sell any bonds issued pursuant to this article to the United States of America, or any agency thereof, at private sale and without advertisement. It shall not be necessary for any municipality proceeding under this article to obtain any other approval, consent, or authorization of any bureau, board, commission, or like instrumentality of the state for the construction of an undertaking; provided, however, that existing powers and duties of the state board of health shall continue in full force and effect. And provided further that no municipality shall construct any systems, plants, works, instrumentalities, and properties used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private usage without having first obtained a certificate of convenience and necessity from the North Carolina utilities commission, except that this requirement for a certificate of convenience and necessity shall not apply to any such undertaking defined in this proviso which has been authorized or the bonds for which have been authorized by any general, special, or local law enacted prior to April 21, 1949. (Ex. Sess., 1938, c. 2, s. 9; 1949, c. 1081.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 160-423: Struck out by Session Laws 1949, c. 1081.

Art. 34A. Bonds to Finance Sewage Disposal System.

§ 160-424.1. Issuance of bonds by municipality.—Subject to the provisions of the Municipal Finance Act, 1921, as amended, but notwithstanding any limitation on indebtedness contained therein or in any other law, any municipality may issue its negotiable bonds for the purpose of paying the cost of acquiring, constructing, extending, enlarging or improving a system for the collection, treatment and disposal of sewage (hereinafter sometimes called the "sewage disposal system"), either within or without or partly within and partly without the municipality, and may pledge to the payment of such bonds the revenues of the sewage disposal system as hereinafter provided. Notwithstanding the provisions of § 160-391, such bonds shall mature at such time or times, not exceeding 40 years from their respective dates, and may be subject to such terms of redemption with or without premium as the governing body may provide, with the approval of the local government commission. (1949, c. 1213, s. 1; 1951, c. 941, s. 1.)

Editor's Note.—The 1951 amendment inserted the word "may" in lieu of the word "to" formerly appearing in the eleventh line and added the last sentence.

§ 160-424.2. Additional powers of municipality.—In addition to any powers which it may now have under the provisions of any law, a municipality shall have the following powers:

(a) To acquire, construct, extend, enlarge or improve and operate a sewage disposal system,

either within or without or partly within and partly without a municipality;

(b) To fix and collect rates, fees and charges for the services and facilities furnished by a sewage disposal system and to fix and collect charges for making connections with the sewer system of such municipality;

(c) To acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, extension, enlargement, improvement or operation of a sewage disposal system;

(d) To construct and operate trunk, intercepting or outlet sewers, sewer mains, laterals, conduits or pipe lines in, along or under any streets, alleys, highways or other public ways;

(e) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any other municipality, sanitary district, private corporation, co-partnership, association or individual providing for or relating to the treatment or disposal of sewage;

(f) To accept from any federal agency loans or grants for the planning, acquisition, extension, enlargement, improvement or lease of a sewage disposal system and to enter into agreements with such agency respecting such loans and grants. (1949, c. 1213, s. 2; 1951, c. 941, s. 2.)

Editor's Note.—The 1951 amendment inserted the words "sewage disposal system" in lieu of the words "sewer system" in clause (f), inserted clause (a) and changed former clauses (a), (b), (c), (d) and (e) to (b), (c), (d), (e) and (f).

§ 160-424.3. Fixing or revising schedule of rates, etc., for services and facilities.—Before any municipality may issue bonds under the authority of this article, it shall fix the initial schedule of rates, fees and charges for the use of and for the services and facilities furnished or to be furnished by the sewage disposal system, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or use the sewer system of such municipality, and revise such schedule of rates, fees and charges from time to time, so that such rates, fees and charges, with other funds available, shall be at least sufficient at all times to pay all expenses of operating, managing and repairing the sewage disposal system and to pay the principal of and the interest on the bonds issued under the provisions of this article as the same shall become due and to provide reserves therefor. (1949, c. 1213, s. 3; 1951, c. 941, s. 3.)

Editor's Note.—The 1951 amendment inserted the words "with other funds available, shall be at least sufficient at all times to pay all expenses of operating, managing and repairing the sewage disposal system".

§ 160-424.4. Authority to charge and collect rates, fees, etc.; basis of computation; additional charge for cause.—The municipality shall charge and collect the rates, fees and charges fixed or revised pursuant to the authority of this article, and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the municipality or of the state or of any sanitary district or other political subdivision of the state.

Such rates, fees and charges shall be just and equitable, and may be based or computed either upon the quantity of water used or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewer system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors.

Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than the municipality's water system may be determined by gauging or metering or in any other manner approved by the municipality.

In cases where the character of the sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable burden upon any sewer system, an additional charge may be made therefor, or the municipality may, if it deems it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the municipality before discharging such sewage into any sewer lines owned or maintained by the municipality. (1949, c. 1213, s. 4.)

§ 160-424.5. Inclusion of charges as part of water bill; water disconnected upon failure to pay charges.—The municipality may provide in the ordinance or resolution authorizing the issuance of bonds under the provisions of this article, that the charges for the services and facilities furnished by any sewage disposal system constructed by the municipality under the provisions of this article shall be included in bills rendered for water consumed on the premises (but such charges shall be stated separately from the water charges) and that if the amount of such charges so included shall not be paid within thirty days from the rendition of any such bills, the municipality may discontinue furnishing water to such premises and may disconnect the same from the waterworks system of the municipality. (1949, c. 1213, s. 5; 1951, c. 941, s. 4.)

Editor's Note.—The 1951 amendment inserted the words "sewage disposal system" in lieu of the words "sewer system or sewer improvements" formerly appearing in the fifth line.

§ 160-424.6. Revenues may be pledged to bond retirement.—Any revenues derived from a sewage disposal system for which bonds shall be issued under the provisions of this article may be pledged to the payment of the principal of and the interest on such bonds and to provide reserves therefor. (1951, c. 941, s. 5.)

Editor's Note.—The 1951 amendment rewrote this section. Prior to the amendment the section was mandatory in requiring that revenue be pledged to bond retirement.

§ 160-424.7. Powers herein granted are supplemental.—The powers granted by this article shall be supplemental and additional to powers conferred by any other law, and shall not be regarded as in derogation of any powers now existing. (1949, c. 1213, s. 7.)

§ 160-424.8. Refunding bonds; approval and sale of bonds issued under article.—Any municipality may issue its negotiable bonds for the purpose of

refunding any bonds then outstanding and issued under the provisions of this article, or for the combined purposes of (a) paying the cost of any extension, enlargement or improvement of a sewage disposal system and (b) refunding bonds of the municipality which shall theretofore have been issued under the provisions of this article and shall then be outstanding and which shall then have matured or be subject to redemption or can be acquired for retirement, and may pledge to the payment of such bonds revenues of the sewage disposal system as above provided. The issuance of such bonds shall be governed by The Municipal Finance Act, 1921, as amended, and the foregoing provisions of this article, in so far as the same may be applicable, and shall not be subject to any limitation on indebtedness contained in The Municipal Finance Act, 1921, as amended, or in any other law. All bonds issued pursuant to this article shall be subject to approval and sale by the local government commission and to delivery by the state treasurer as provided in the Local Government Act. (1951, c. 941, s. 6.)

Cross Reference.—As to municipal parking authorities, see § 160-475 through 160-496.

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

Art. 35. Capital Reserve Funds.

§ 160-425. Short title.

For comment on this enactment, see 21 N. C. Law Rev. 357.

§ 160-428. Sources of capital reserve fund.—The capital reserve fund may consist of moneys derived from any one or more of the following sources:

(1945, c. 464, s. 1.)

Editor's Note.—The 1945 amendment struck out the words "except that no money shall be deposited in such capital reserve fund after July tenth, one thousand nine hundred and forty-five," formerly appearing after the word "sources" in line three. As only the introductory paragraph was affected by the amendment the rest of the section is not set out.

§ 160-429. How the capital reserve fund may be established; revenues derived from public utilities.

If revenues derived from a utility or utilities (water system, water and sewer system, electric system, gas system) owned by the municipality are included in said ordinance, or an amendment thereto, as a source or sources, said ordinance or amendment may stipulate that the moneys of such source or sources shall not be withdrawn and expended for any purpose other than repairing, enlarging, extending or reconstructing such utility or utilities. (1943, c. 467, s. 5; 1945, c. 464, s. 1.)

Editor's Note.—The 1945 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

§ 160-430. When the capital reserve fund shall be deemed established.—The capital reserve fund shall be deemed established when the ordinance passed under the provisions of § 160-429 is approved by the local government commission. After action is taken upon the provisions of said ordinance by the local government commission the secretary of said commission shall notify the clerk in writing of the approval by said commission or disapproval, if the commission declines to approve the ordinance, and the reasons therefor. Upon receipt of the notice of approval the clerk

shall thereupon notify the financial officer of the municipality who shall immediately deposit in the designated depository the moneys stated as available in said ordinance for the capital reserve fund and simultaneously report such deposit to the local government commission. (1943, c. 467, s. 6; 1945, c. 464, s. 1.)

Editor's Note.—The 1945 amendment omitted the former second paragraph.

§ 160-430.1. Increases to capital reserve fund.—No increase to a capital reserve fund shall be made except by resolution adopted by the governing body and the provisions thereof approved by the local government commission which resolution shall state the source or sources of moneys from which such increase is intended to be made and the amount of the money from each source, but each increase shall be from moneys derived from the identical source or sources as those stated in the ordinance establishing the capital reserve fund or in an amendment thereto. The clerk shall transmit a certified copy of such resolution to the local government commission. After action is taken upon the provisions of said resolution by the local government commission the secretary of said commission shall notify the clerk in writing of the approval by said commission or disapproval, if the commission declines to approve the resolution, and the reasons therefor. Upon receipt of the notice of approval the clerk shall thereupon notify the financial officer of the municipality who shall immediately deposit in the duly designated depository the moneys stated in said resolution and simultaneously report such deposit to the local government commission. Deposits required in § 160-441 shall not be construed as increases of a capital reserve fund within the meaning of this section. (1945, c. 464, s. 1.)

§ 160-433. Purposes for which capital reserve fund may be used.

(d) Investment in bonds, notes or certificates of indebtedness of the United States of America, in bonds or notes of the state of North Carolina, or in bonds of the municipality;

(1945, c. 464, s. 1.)

Editor's Note.—As the 1945 amendment affected only subsection (d), the rest of the section is not set out.

§ 160-434. Authorization for withdrawals from the capital reserve fund.—A withdrawal for any one of the purposes contained in clauses (b), (c), (d) and (e) of § 160-433 shall be authorized by resolution duly adopted by the governing body. Each such resolution shall specify the purpose of the withdrawal, the amount of such withdrawal, the sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each source. Each such resolution shall contain a request to the local government commission for its approval of the provisions thereof, shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy of such resolution to the local government commission. A resolution authorizing a withdrawal for the purpose stated in clause (b) of § 160-433 shall further specify the total appropriations contained in the annual appropriation ordinance of the fiscal year in which such withdrawal is authorized and shall state the total amount of such previous withdrawals made in

such fiscal year and the date upon which the withdrawal shall be repayable to the capital reserve fund. In any case where all or any part of a capital reserve fund has been withdrawn and invested in bonds, notes or certificates of indebtedness of the United States of America which are about to mature and it is desired to continue investment of like kind, such continuance may be effected by exchange of said maturing bonds, notes or certificates of indebtedness through the treasury of the United States, or an authorized agent thereof, for bonds, notes or certificates of indebtedness of the United States of America of like principal amount and of later maturity or maturities; Provided, however, each such continuance and exchange shall first be authorized by resolution adopted by the governing body and the provisions thereof approved by the local government commission.

(1945, c. 464, s. 1.)

Editor's Note.—The 1945 amendment added the last sentence to the first paragraph. As the rest of the section was not affected by the amendment it is not set out.

§ 160-439. How a withdrawal may be made.—No withdrawal from the capital reserve fund shall be made except pursuant to authority of the governing body by resolution or ordinance which has taken effect. Each withdrawal shall be for the full amount authorized, except a withdrawal which may be made for all or a part thereof from time to time according to the plan of amortization, and shall be by check drawn on the depository by the financial officer of the municipality and payable to said financial officer, except that a check evidencing withdrawal for the purpose of investment may be made payable to the obligor or to the vendor of such bonds, notes or certificates of indebtedness in which investment has been duly authorized. Each such check shall bear a certificate on the face or reverse thereof signed by the secretary of the local government commission or by his duly designated assistant that the withdrawal evidenced thereby has been approved under the provisions of the Municipal Capital Reserve Act of One Thousand Nine Hundred and Forty-three, and such certificate shall be conclusive evidence that such withdrawal has been approved by the local government commission: Provided, however, the state of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such certificate. (1943, c. 467, s. 15; 1945, c. 464, s. 1.)

Editor's Note.—The 1945 amendment added the exception clause to the second sentence.

§ 160-441. Certain deposits mandatory.

All deposits required in this section shall be made in the duly designated depository of the capital reserve fund and it shall be the duty of the financial officer to simultaneously report each such deposit to the local government commission. (1943, c. 467, s. 17; 1945, c. 464, s. 1.)

Editor's Note.—The 1945 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

§ 160-444. Termination of power to establish and increase capital reserve fund.—No ordinance establishing a capital reserve fund, or amendment thereto for including additional sources, shall be

passed nor shall a resolution providing for increase of a capital reserve fund be adopted after July tenth, one thousand nine hundred forty-seven. (1945, c. 464, s. 1.)

Validation of Former Increase.—Session Laws 1945, c. 464, s. 3, provides: "Any increase heretofore made to a capital reserve fund with money from the same source or sources stated in the ordinance or order establishing said fund in accordance with the provisions of either the Municipal Capital Reserve Act of one thousand nine hundred forty-three or the County Capital Reserve Act of one thousand nine hundred forty-three, or stated in an amendment to said ordinance or order, is hereby validated."

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

Art. 36. Extension of Corporate Limits.

§ 160-445. Procedure for adoption of ordinance extending limits; effect of adoption when no election required.—After public notice has been given by publication once a week for four successive weeks in a newspaper in the county with a general circulation in the municipality, or if there be no such paper, by posting notice in five or more public places within the municipality, describing by metes and bounds the territory to be annexed, thus notifying the owner or owners of the property located in such territory, that a session of the municipal legislative body will meet for the purpose of considering the annexation of such territory to the municipality, the governing body of any municipality is authorized and empowered to adopt an ordinance extending its corporate limits by annexing thereto any contiguous tract or tracts of land not embraced within the corporate limits of some other municipality. Then from and after the date of the adoption of such ordinance, unless an election is required as herein provided, the territory and its citizens and property shall be subject to all the debts, laws, ordinances and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. (1947, c. 725, s. 1.)

Editor's Note.—For comment on this article, see 25 N. C. Law Rev. 453.

§ 160-446. Referendum on question of extension.—If, at the meeting held for such purpose, a petition is filed and signed by at least fifteen per cent (15%) of the qualified voters resident in the area proposed to be annexed requesting a referendum on the question, the governing body shall, before passing said ordinance, annexing the territory, submit the question as to whether said territory shall be annexed to a vote of the qualified voters of the area proposed to be annexed, and the governing body may or may not cause the question to be submitted to the residents of the municipality voting separately. The governing body may, without receipt of a petition, call for a referendum on the question, provided, however, the governing body of the municipality shall be required to call for a referendum within the municipality if a petition is filed and signed by at least fifteen per cent (15%) of the qualified voters residing in the municipality, who actively participated in the last gubernatorial election. (1947, c. 725, s. 2.)

§ 160-447. Extent of participation in referendum; call of election.—Upon receipt of a sufficient petition, or if the board, on its own motion, determines that a referendum shall be held, the local governing body shall determine whether or not the election will be conducted solely in the area to be annexed or simultaneously with the qualified voters of the municipality, and shall order the board of elections of the county in which the municipality is located to call an election to determine whether or not the proposed territory shall be annexed to the city or town. Within sixty (60) days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question. (1947, c. 725, s. 3.)

§ 160-448. Action required by county board of elections; publication of resolution as to election; costs of election.—Such election shall be called by a resolution or resolutions of said county board of elections which shall:

(a) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(b) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed, and if ordered by the local governing body, the qualified voters of said city or town voting separately;

(c) Provide for a special registration of voters in the territory proposed to be annexed for said election;

(d) Designate the precincts and voting places for such election;

(e) Name the registrars and judges of such election;

(f) And make all other necessary provisions for the holding and conducting of such election, the canvassing of the returns and the declaration of the results of such election. Said resolution shall be published in one or more newspapers of the said county once a week for thirty (30) days prior to the opening of the registration books. All cost of holding such election shall be paid by the city or town. Except as herein provided, said election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged. (1947, c. 725, s. 4.)

§ 160-449. Ballots; effect of majority vote for extension.—At such election those qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension." If at such election a majority of the votes cast from the area proposed for annexation shall be "For Extension," and, in the event an election is held in the municipality, the majority of the votes cast in the municipality shall also be "For Extension," then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all the debts, laws, ordinances, and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. The newly elected territory shall be sub-

ject to city taxes levied for the fiscal year following the date of annexation. (1947, c. 725, s. 5.)

§ 160-450. Maps of annexed area, copy of ordinance and election results recorded in the office of register of deeds.—Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the secretary of state. (1947, c. 725, s. 6.)

§ 160-451. Surveys of proposed new areas.—The governing bodies of the cities and towns are hereby authorized to make the surveys required to properly describe the territory proposed to be annexed. (1947, c. 725, s. 7.)

§ 160-452. Areas having less than twenty-five eligible voter-residents.—No city or town shall, by virtue of the authority granted in this article, annex any territory in which there are less than twenty-five legal residents eligible to register and vote unless the owners of all the property proposed to be annexed sign a petition requesting the governing body to annex the territory. (1947, c. 725, s. 8.)

§ 160-453. Application of article.—The powers granted by this article shall be supplemental and additional to powers conferred by any other law, and shall not be regarded as in derogation of any powers now existing. Provided, further, that this article shall not apply to any town or municipality in New Hanover county or Dare county. (1947, c. 725, s. 9; 1951, c. 824.)

Editor's Note.—The 1951 amendment rewrote the first sentence.

SUBCHAPTER VII. URBAN REDEVELOPMENT.

Art. 37. Urban Redevelopment Law.

§ 160-454. Short title.—This article shall be known and may be cited as the "Urban Redevelopment Law." (1951, c. 1095, s. 1.)

§ 160-455. Findings and declaration of policy.—It is hereby determined and declared as a matter of legislative finding—

(a) That there exist in urban communities in this State blighted areas as defined herein.

(b) That such areas are economic or social liabilities, inimical and injurious to the public health, safety, morals and welfare of the residents of the State, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values.

(c) That the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire

and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of communities.

(d) That the foregoing conditions are beyond remedy or control entirely by regulatory processes in the exercise of the police power and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted.

(e) That the acquisition, preparation, sale, sound replanning, and redevelopment of such areas in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare.

Therefore, it is hereby declared to be the policy of the State of North Carolina to promote the health, safety, and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as redevelopment commissions, which shall exist and operate for the public purposes of acquiring and replanning such areas and of holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment. Such purposes are hereby declared to be public uses for which public money may be spent, and private property may be acquired by the exercise of the power of eminent domain. (1951, c. 1095, s. 2.)

§ 160-456. Definitions.—The following terms where used in this article, shall have the following meanings, except where the context clearly indicates a different meaning.

(a) "Commission" or "redevelopment commission"—A public body and a body corporate and politic created and organized in accordance with the provisions of this article.

(b) "Bonds"—Any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to this article.

(c) "City"—Any city or town. "The city" shall mean the particular city for which a particular commission is created.

(d) "Field of operation"—The area within the territorial boundaries of the city for which a particular commission is created.

(e) "Governing body"—In the case of a city or town, the city council or other legislative body.

(f) "Government"—Includes the State and federal governments or any subdivision, agency or instrumentality corporate or otherwise of either of them.

(g) "Municipality"—Any incorporated city or town with a population of 25,000 or more according to the last decennial census.

(h) "Obligee of the commission" or "obligee"—Any bondholder, trustee or trustees for any bondholders, any lessor demising property to a commission used in connection with a redevelopment project, or any assignees of such lessor's interest, or any part thereof, and the federal government, when it is a party to any contract with a commission.

(i) "Planning commission"—Any planning commission established by ordinance for a municipality of this State. "The planning commission" shall mean the particular planning commission of the city or town in which a particular commission operates.

(j) "Real property"—Lands, lands under water, structures and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(k) "Redeveloper"—Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of an area under the provisions of this article.

(l) "Redevelopment"—The acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces.

(m) "Redevelopment area"—Any area, which a planning commission may find to be blighted because of the existence of the conditions enumerated in subsection (q) of this section so as to require redevelopment under the provisions of this article.

(n) "Redevelopment area plan"—A plan for the redevelopment of a redevelopment area made by a "commission" in accordance with the provisions of this article.

(o) "Redevelopment contract"—A contract between a commission and a redeveloper for the redevelopment of an area under the provisions of this article.

(p) "Redevelopment proposal"—A proposal, including supporting data and the form of a redevelopment contract submitted for approval to the governing body by a commission, for the redevelopment of all or any part of a redevelopment area.

(q) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominately residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no individual tract, building or improvement shall be considered a part of any blighted area nor subject to the power of eminent domain herein granted unless it is of the character herein described and substantially contributes to the conditions rendering such area blighted.

(r) "Redevelopment project" shall mean any work or undertaking:

1. To acquire blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development or redevelopment of such blighted areas or to the prevention of the spread or recurrence of conditions of blight;

2. To clear any such areas by demolition or removal of existing buildings, structures, streets,

utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

3. To sell land in such areas for residential, recreational, commercial, industrial or other use or for the public use to the highest bidder as herein set out or to retain such land for public use, in accordance with the redevelopment plan.

The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project. (1951, c. 1095, s. 3.)

§ 160-457. Formation of commissions. — (a) Each municipality, as defined herein, is hereby authorized to create separate and distinct bodies corporate and politic to be known as the redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance or resolution creating a commission to function within the territorial limits of said municipality. Notice of the intent to consider the passage of such a resolution or ordinance shall be published at least ten days prior to the meeting.

(b) The governing body of a municipality shall not adopt a resolution pursuant to subsection (a) above unless it finds:

(1) That blighted areas (as herein defined) exist in such municipality, and

(2) That the redevelopment of such areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

(c) The governing body shall cause a certified copy of such ordinance or resolution to be filed in the office of the Secretary of State; upon receipt of the said certificate the Secretary of State shall issue a certificate of incorporation.

(d) In any suit, action or proceeding involving or relating to the validity or enforcement of any contract or act of a commission, a copy of the certificate of incorporation duly certified by the Secretary of State shall be admissible in evidence and shall be conclusive proof of the legal establishment of the commission. (1951, c. 1095, s. 4.)

§ 160-458. Appointment and qualifications of members of commission.—Upon certification of a resolution declaring the need for a commission to operate in a city or town, the mayor and governing board thereof, respectively, shall appoint, as members of the commission, five citizens who shall be residents of the city or town in which the commission is to operate. (1951, c. 1095, s. 5.)

§ 160-459. Tenure and compensation of members of commission.—The members who are first appointed shall serve for terms of one, two, three, four and five years, respectively, from the date of their appointment as shall be specified at the time of their appointment. Thereafter, the term of office shall be five years. A member shall hold office until his successor has been appointed and qualified. Vacancies for the unexpired terms shall be promptly filled by the mayor and governing body. A member shall receive no compensation for this service, but shall be entitled within

the budget appropriation to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. (1951, c. 1095, s. 6.)

§ 160-460. Organization of commission.—The members of a commission shall select from among themselves a chairman, a vice chairman, and such other officers as the commission may determine. A commission may employ a secretary, its own counsel, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons. Three members shall constitute a quorum for its meeting. Members shall not be liable personally on the bonds or other obligations of the commission, and the rights of creditors shall be solely against such commission. A commission may delegate to one or more of its members, agents or employees such of its powers as it shall deem necessary to carry out the purposes of this article, subject always to the supervision and control of the commission. For inefficiency or neglect of duty or misconduct in office, a commissioner of a commission may be removed by the governing body, but a commissioner shall be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to such hearing and have had an opportunity to be heard in person or by counsel. (1951, c. 1095, s. 7.)

§ 160-461. Interest of members or employees.—No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, or in any area which he may have reason to believe may be certified to be a redevelopment area, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project. The acquisition of any such interest in a redevelopment project or in any such property or contract shall constitute misconduct in office. If any member or employee of a commission shall have already owned or controlled within the preceding two years any interest, direct or indirect, in any property later included or planned to be included in any redevelopment project, under the jurisdiction of the commission, or has any such interest in any contract for material or services to be furnished or used in connection with any redevelopment project, he shall disclose the same in writing to the commission and to the local governing body, and such disclosure shall be entered in writing upon the minute books of the commission. Failure to make such disclosure shall constitute misconduct in office. (1951, c. 1095, s. 8.)

§ 160-462. Powers of commission.—A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to those herein otherwise granted.

(a) To procure from the planning commission

the designation of areas in need of redevelopment and its recommendations for such redevelopment;

(b) To cooperate with any government or municipality as herein defined;

(c) To act as agent of the State or federal government or any of its instrumentalities or agencies for the public purposes set out in this article;

(d) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the municipality and to undertake and carry out "redevelopment projects" within its area of operation;

(e) Subject to the provisions of § 160-464 (b) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (notwithstanding anything to the contrary contained in this article or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(f) Within its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and notwithstanding the provisions of G. S. 160-59 but subject to the provisions of § 160-464, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment proposal approved by the governing body; to enter into contracts with "redevelopers" of property containing covenants, restrictions and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of

any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this article.

(g) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, in such investments as may be lawful for guardians, executors, administrators or other fiduciaries under the laws of this State; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled.

(h) To borrow money and to apply for and accept advances, loans evidenced by bonds, grants, contributions and any other form of financial assistance from the federal government, the State, county, municipality or other public body or from any sources, public or private for the purposes of this article, to give such security as may be required and to enter into and carry out contracts in connection therewith; and, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this article.

(i) Acting through one or more commissioners or other persons designated by the commission, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers.

(j) Within its area of operation, to make or have made all surveys, studies and plans (but not including the preparation of a general plan for the community) necessary to the carrying out of the purposes of this article and in connection therewith to enter into or upon any land, building, or improvement thereon for such purposes and to make soundings, test borings, surveys, appraisals and other preliminary studies and investigations necessary to carry out its powers but such entry shall constitute no cause of action for trespass in favor of the owner of such land, building or improvement except for injuries resulting from negligence, wantonness or malice; and to contract or cooperate with any and all persons or agencies public or private, in the making and carrying out of such surveys, appraisals, studies and plans.

(k) To make such expenditures as may be necessary to carry out the purposes of this article; and to make expenditures from funds obtained from the federal government.

(l) To sue and be sued;

(m) To adopt a seal;

(n) To have perpetual succession;

(o) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice chairman and secretary or assistant secretary, or, treasurer or assistant treasurer of

the commission shall be held to have been properly executed for and on its behalf;

(p) To make and from time to time amend and repeal bylaws, rules, regulations and resolutions;

(q) To make available to the government or municipality or any appropriate agency, board or commission, the recommendations of the commission affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety or welfare. (1951, c. 1095, s. 9.)

§ 160-463. Preparation and adoption of redevelopment plans.—(a) A commission shall prepare a redevelopment plan for any area certified by the planning commission to be a redevelopment area. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) The planning commission's certification of a redevelopment area shall be made in conformance with its comprehensive general plan, if any, (which may include, inter alia, a plan of major traffic arteries and terminals and a land use plan and projected population densities) for the area.

(c) A commission shall not acquire real property for a development project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plan, as hereinafter prescribed.

(d) The redevelopment commission's redevelopment area plan shall include, without being limited to, the following:

(1) The boundaries of the area, with a map showing the existing uses of the real property therein;

(2) A land use plan of the area showing proposed uses following redevelopment;

(3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;

(4) A preliminary site plan of the area;

(5) A statement of the proposed changes, if any, in zoning ordinances or maps;

(6) A statement of any proposed changes in street layouts or street levels;

(7) A statement of the estimated cost and method of financing of acquisition of the redevelopment area, and of all other costs necessary to prepare the area for redevelopment;

(8) A statement of such continuing controls as may be deemed necessary to effectuate the purposes of this article;

(9) A statement of a feasible method proposed for the relocation of the families displaced.

(e) In conformity with such redevelopment area plan, the commission may prepare a proposal for the redevelopment of all or part of such area, including the proposed redevelopment contract, with the redeveloper selected. The commission shall, after giving ten days' public notice thereof, hold public hearings prior to its final determination of the redevelopment proposal.

(f) The commission shall submit the redevelopment proposal to the planning commission for re-

view. The planning commission, shall, within forty-five days, certify to the redevelopment commission its recommendation on the redevelopment proposal, either of approval, rejection or modification, and in the latter event, specify the changes recommended.

(g) Upon receipt of the planning commission's recommendation, or at the expiration of forty-five days, if no recommendation is made by the planning commission, the commission shall submit to the governing body the redevelopment proposal with the recommendation, if any, of the planning commission thereon. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the community and its environs, which will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangements, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions of blight.

(h) The governing body upon receipt of the redevelopment proposal and the recommendation, if any, of the planning commission shall hold a public hearing upon said proposal. Notice of the time, place and purpose of such hearing shall be published at least once a week for three consecutive weeks in a newspaper of general circulation, the time of the hearing to be at least ten days from the last publication of notice. The notice shall describe the redevelopment area by boundaries and by city block, street and house number. The redevelopment proposal with such maps, plans, contracts, or other documents as form part of said proposal, together with the recommendation, if any, of the planning commission, and supporting data shall be available for public inspection for at least ten days prior to the hearing.

At the hearing the governing body shall afford an opportunity to all persons or agencies interested to be heard and shall receive, make known and consider recommendations in writing with reference to the redevelopment proposal.

(i) The governing body shall approve, amend or reject the redevelopment proposal and the redevelopment contracts as submitted.

(j) Upon approval by the governing body of the redevelopment proposal and redevelopment contracts, the commission is authorized to execute the redevelopment contract after advertisement and award as hereinafter specified and to take such action as may be necessary to carry it out.

(k) A redevelopment plan may be modified at

any time by the commission provided that, if modified after the sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body as provided above. (1951, c. 1095, s. 10.)

§ 160-464. Provisions of the redevelopment contract; powers of the commission; procedure on sale of contract.—(a) A commission may sell, exchange or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this article; provided, that such sale, exchange or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as hereinafter specified in subsection (b).

(b) Except as hereinafter specified, no sale of any property by the commission or contract for the accomplishment of any redevelopment project by the commission or any contract with a developer shall be effected except after advertisement bid and awarded as hereinafter set out. The commission shall by public notice by publication once each week for four consecutive weeks in a newspaper having a general circulation in the municipality prior to the consideration of any sale or redevelopment or other contract proposal invite proposals and make available all pertinent information to any persons interested in undertaking a purchase of property, a contract or the redevelopment of an area or any part thereof. Such notice shall identify the property affected, shall specify in outline the property to be conveyed, the work to be accomplished and the conditions of the contract and shall state that further information may be obtained at the office of the commission. The commission may require such bid bond as it deems appropriate. After receipt of all bids, the contract shall be awarded to the lowest responsible bidder or the sale made to the highest responsible bidder as the case may be; provided, nothing herein shall prevent the sale at private sale to the municipality or other public body of such property as is specified in subsection (c) (1), (2) and (3) of this section with or without consideration as shall be determined by the commission; provided further, that nothing herein shall prohibit the commission from negotiating contracts with a municipality to perform such work as the commission shall deem appropriate. All bids may be rejected. All awards of contracts and all sales shall be subject to the approval of the governing body of the municipality. After approval by the governing body of the municipality, the commission may execute such redevelopment or other contract and deliver deeds and other instruments and take all steps neces-

sary to effectuate such redevelopment or other contract or sale. The commission may privately contract for engineering, legal, surveying, professional or other similar services without advertisement or bid and may similarly sell personal property of a value of less than \$500 at private sale.

(c) In carrying out a redevelopment project, the commission may:

(1) Convey to the municipality in which the project is located with or without consideration such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways, at private sale.

(2) Grant easements and rights of way, for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan and

(3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body, such real property, as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(d) The commission may temporarily operate and maintain real property in a redevelopment project area pending the disposition of the property for redevelopment, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan. The contract between the commission and a redeveloper shall contain, without being limited to the following provisions:

(1) Plans prepared by the redeveloper or otherwise and other such documents as may be required to show the type, material, structure and general character of the redevelopment project;

(2) A statement of the use intended for each part of the project;

(3) A guaranty of completion of the redevelopment project within specified time limits;

(4) The amount, if known, of the consideration to be paid;

(5) Adequate safeguards for proper maintenance of all parts of the project;

(6) Such other continuing controls as may be deemed necessary to effectuate the purposes of this article.

(e) Any deed to a redeveloper in furtherance of a redevelopment contract shall be executed in the name of the commission, by its proper officers, and shall contain in addition to all other provisions, such conditions, restrictions and provisions as the commission may deem desirable to run with the land in order to effectuate the purposes of this article. (1951, c. 1095, s. 11.)

§ 160-465. Eminent domain.— Title to any property acquired by a commission through eminent domain shall be an absolute or fee simple title, unless a lesser title shall be designated in the eminent domain proceedings. The commission may exercise the right of eminent domain in the manner provided by law for the exercise of such right by municipalities, except that § 40-10 of the General Statutes shall not apply to such commission. If any of the real property in the redevelopment area which is to be acquired has, prior to such acquisition, been devoted to another public use, it may, nevertheless, be acquired by condemnation; provided, that no real

property belonging to any municipality or county or to the State may be acquired without its consent. (1951, c. 1095, s. 12.)

§ 160-466. Issuance of bonds.—(a) The commission shall have power to issue bonds from time to time for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. The commission shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. The commission may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds; or

(2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the commission (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said commission acquired for the purpose of this article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes. Bonds may be issued by a commission under this article notwithstanding any debt or other limitation prescribed in any statute. This article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission hereunder and such authorizations and issuance shall not be subject to any conditions, restrictions or limitations imposed by any other statute whether general, special or local, except as provided in subsection (d) of this section.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such

place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) The bonds shall be approved and sold by the local government commission in the same manner as bonds of municipalities are approved and sold by said local government commission under the provisions of the Local Government Act; provided, however, said local government commission may sell all or any part of an issue of bonds authorized pursuant to this article to the federal government at private sale and without advertisement and, in the event less than all of such bonds are sold to the federal government at private sale, may sell the balance of such bonds at private sale and without advertisement to any party or parties other than the federal government at an interest cost which shall not exceed the interest cost of that portion of such bonds sold to the federal government, such cost to be determined in the same manner as interest cost is determined in the sale of bonds of municipalities. No bonds issued pursuant to this article shall be sold at less than par and accrued interest. Such bonds shall be delivered in the same manner as bonds of municipalities are delivered under the provisions of § 159-21 of the General Statutes (in applying the provisions of said § 159-21 to bonds authorized pursuant to this article the words "bonds", "notes" and "indebtedness" as they appear in the context thereof shall mean "bonds" as defined in this article and the word "unit" shall mean "commission" as defined in this article).

(e) In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of the commission or the security therefor, any such bond reciting in substance that it has been issued by the commission to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this article. (1951, c. 1095, s. 13.)

§ 160-467. Powers in connection with issuance of bonds.—(a) In connection with the issuance of bonds or the incurring of obligations and in order to secure the payment of such bonds or obligations, the commission, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting of suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any redevelopment project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds, to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof;

(5) To covenant (subject to the limitations contained in this article) as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(7) To covenant as to the use, maintenance and replacement of any of or all of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance moneys, and to warrant its title to such property;

(8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) To vest in any obligees of the commissions the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default to take possession of and use, operate and manage any redevelopment project or any part thereof, title to which is in the commission, or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement with such obligees; to provide for the powers and duties of such obligees and to limit the liabilities thereof, and to provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the powers herein granted; to make such cove-

nants (other than and in addition to the covenants herein expressly authorized) and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said commission, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

(b) The commission shall have power by its resolution, trust indenture, mortgage lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any redevelopment project or any part thereof title to which is in the commission, to be surrendered to any such obligee;

(2) To obtain the appointment of a receiver of any redevelopment project of said commission or any part thereof, title to which is in the commission and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of, carry out, operate and maintain such project or any part therefrom and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct, and

(3) To require said commission and the commissioners, officers, agents and employees thereof to account as if it and they were the trustees of an express trust. (1951, c. 1095, s. 14.)

§ 160-468. Right of obligee.—An obligee of the commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this article; and

(b) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission. (1951, c. 1095, s. 15.)

§ 160-469. Cooperation by public bodies.—(a) For the purpose of aiding and cooperating in the planning, undertaking or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a commission;

(2) Cause parks, playgrounds, recreational,

community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of the redevelopment;

(5) Cause administrative and other services to be furnished to the commission of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan;

(b) Any sale, conveyance, or agreement provided for in this section may be made by a public body without public notice, advertisement or public bidding. (1951, c. 1095, s. 16.)

§ 160-470. Grant of funds by community.—Any municipality located within the area of operation of a commission may appropriate funds to a commission for the purpose of aiding such commission in carrying out any of its powers and functions under this article. To obtain funds for this purpose, the municipality may levy taxes and may in the manner prescribed by law issue and sell its bonds. (1951, c. 1095, s. 17.)

§ 160-471. Records and reports.—(a) The books and records of a commission shall at all times be open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, shall be filed with the city clerk and shall be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required shall be made. Copies of such reports shall be filed with the mayor and governing body of the municipality. (1951, c. 1095, s. 18.)

§ 160-472. Title of purchaser.—Any instrument executed by a commission and purporting to convey any right, title or interest in any property under this article shall be conclusive evidence of compliance with the provisions of this article insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. (1951, c. 1095, s. 19.)

§ 160-473. Preparation of general plan by local governing body.—The governing body of any municipality or county, which is not otherwise authorized to create a planning commission with power to prepare a general plan for the development of the community, is hereby authorized and empowered to prepare such a general plan prior to the initiation and carrying out of a redevelopment project under this article. (1951, c. 1095, s. 20.)

§ 160-474. Inconsistent provisions.—Insofar as the provisions of this article are inconsistent with

the provisions of any other law, the provisions of this article shall be controlling. (1951, c. 1095, s. 22.)

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

Art. 38. Parking Authorities.

§ 160-475. Short title.—This article may be cited as the "Parking Authority Law." (1951, c. 779, s. 1.)

§ 160-476. Definitions.—As used or referred to in this article, unless a different meaning clearly appears from the context:

1. The term "authority" shall mean a public body and a body corporate and politic organized in accordance with the article for the purposes, with the powers and subject to the restrictions hereinafter set forth;

2. The term "city" shall mean the city that is, or is about to be, included in the territorial boundaries of an authority when created hereunder;

3. The term "city council" shall mean the legislative body, council, board of commissioners, or other body charged with governing the city;

4. The term "city clerk" shall mean the clerk of the city or the officer thereof charged with the duties customarily imposed on the clerk;

5. The term "commissioner" shall mean one of the members of an authority, appointed in accordance with the provisions of this article;

6. The term "bonds" shall mean bonds authorized by this article;

7. The term "real property" shall mean lands, structures, franchises, and interest in lands, and any and all things usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms of years, and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real estate;

8. The term "parking project" shall mean any area or place operated or to be operated by the authority for the parking or storing of motor and other vehicles and shall without limiting the foregoing, include all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles. (1951, c. 779, s. 2.)

§ 160-477. Creation of authority.—The city council of any city may, upon its own initiative, and shall, upon petition of 25 or more residents of the city, hold a public hearing on the question whether or not it is necessary for the city to organize an authority under the provisions of this article. Notice of the time, place and purpose of such hearing shall be given by publication in a newspaper of general circulation in the city, at least once, at least 10 days before such hearing. At such hearing, an opportunity to be heard shall be granted to all residents and taxpayers of the city and all other interested persons. If, after such hearing, the city council shall by resolution determine that it is necessary for the city to or-

ganize an authority under the provisions of this article, the city council shall appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present or cause to be presented to the Secretary of State of North Carolina a written application signed by them, which shall set forth (1) a statement that the city council has, pursuant to this article, and after a public hearing held as herein required, determined that it is necessary for the city to organize an authority under the provisions of this article, and has appointed the signers of such application as commissioners of such an authority; (2) a statement that the commissioners desire the authority to become a public body and a body corporate and politic under this article; (3) the name, address and term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location and the principal office of the proposed corporation. The application shall be accompanied by a copy, certified by the city clerk, of the resolution or resolutions of the city council making such determination and appointments. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by law to take and certify oaths, who shall certify upon the application that he personally knows said commissioners and knows them to be the persons appointed as stated in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or any other corporation of this State or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and body corporate and politic under the name proposed in the application; and the Secretary of State shall make and issue a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall be co-terminous with those of such city.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1951, c. 779, s. 3.)

§ 160-478. Appointment, removal, etc., of commissioners; quorum; chairman; vice-chairman, agents and employees; duration of authority.—An authority shall consist of five commissioners appointed by the city council, and the city council

shall designate the first chairman. No commissioner shall be a city official.

The commissioners who are first appointed shall be designated by the city council to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed by the city council and has qualified. Vacancies shall be filled by the city council for the unexpired term. Three commissioners shall constitute a quorum. A commissioner shall receive no compensation for his services, but he shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may, with the consent of the city council call upon the city attorney or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. The city council may remove any member of the authority for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his defense upon not less than 10 days' notice.

Such authority and its corporate existence shall continue only for a period of five years and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities or bonds have otherwise been discharged. Upon its ceasing to exist, all its rights and properties shall pass to the city. (1951, c. 779, s. 4.)

§ 160-479. Duty of authority and commissioners.—The authority and its commissioners shall be under a statutory duty to comply or cause compliance strictly with all provisions of this article and, in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1951, c. 779, s. 5.)

§ 160-480. Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest direct or indirect in any parking project or in any property included or planned to be included in any parking project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any parking project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any parking project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest

shall constitute misconduct in office. (1951, c. 779, s. 6.)

§ 160-481. Purpose and powers of the authority.

—An authority incorporated under this article shall constitute a public body and a body corporate and politic, exercising public powers as an agency or instrumentality of the city with which it is coterminous. The purpose of the authority shall be to relieve traffic congestion of the streets and public places in the city by means of off-street parking facilities, and to that end to acquire, construct, improve, operate and maintain one or more parking projects in the city. To carry out said purpose, the authority shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To acquire, hold and dispose of personal property for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the condemnation of real property;
4. To acquire by purchase or condemnation, and use real property necessary or convenient. All real property acquired by the authority by condemnation shall be acquired in the manner provided by law for the condemnation of land by the city;
5. To make bylaws for the management and regulation of its affairs, and, subject to agreements with bondholders, for the regulation of parking projects;
6. To make contracts and leases, and to execute all instruments necessary or convenient;
7. To construct such buildings, structures and facilities as may be necessary or convenient;
8. To construct, reconstruct, improve, maintain and operate parking projects;
9. To accept grants, loans or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or the city, and to expend the proceeds for any purposes of the authority;
10. To fix and collect rentals, fees and other charges for the use of parking projects or any of them subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided;
11. To do all things necessary or convenient to carry out the purpose of the authority and the powers expressly given to it by this article. (1951, c. 779, s. 7.)

§ 160-482. Conveyance of property by the city to the authority; acquisition of property by the city or by the authority.—1. The city may convey, with or without consideration, to the authority real and personal property owned by the city for use by the authority as a parking project or projects or a part thereof. In case of real property so conveyed, the instrument of conveyance shall contain a provision for reversion of the property to the city upon the termination of the corporate existence of the authority or upon the termination of the use of the property for the corporate purpose of the authority. Such conveyance of property by the city to the authority may be made without regard to the provisions of other laws regulating sales of property by the city or requiring previous advertisement of sales of property by the city.

2. The city may acquire by purchase or condemnation real property in the name of the city for the authority or for the widening of existing roads, streets, parkways, avenues or highways or for new roads, streets, parkways, avenues or highways to any of the parking projects, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by the city. The city may close such streets, roads, parkways, avenues, or highways as may be necessary or convenient.

3. Contracts may be entered into between the city and the authority providing for the property to be conveyed by the city to the authority, the additional property to be acquired by the city and so conveyed, the streets, roads, parkways, avenues and highways to be closed by the city, and the amounts, terms and conditions of payment to be made by the authority. Such contracts may contain covenants by the city as to the road, street, parkway, avenue and highway improvements to be made by the city, including provisions for the installation of parking meters in designated streets of the city and for the removal of such parking meters in the event that such parking meters are not found to be necessary or convenient. Any such contract may pledge all or any part of the revenues of such parking meters to the authority for a period of not to exceed the period during which bonds of the authority shall be outstanding, provided that the total amount of such revenues which may be paid pursuant to such a pledge shall not exceed the total of the principal of and interest on such bonds which become due and payable during such period. Such contracts may also contain provisions limiting or prohibiting the construction and operation by the city or any agency thereof in designated areas of public parking facilities and parking meters whether or not a fee or charge is made therefor. Any such contracts between the city and the authority may be pledged by the authority to secure its bonds and may not be modified thereafter except as provided by the terms of the contracts or by the terms of the pledge. The city council may authorize such contracts on behalf of the city and no other authorization on the part of the city for such contracts shall be necessary.

4. The authority may itself acquire real property for a parking project at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by the city.

5. In case the authority shall acquire any real property which it shall determine is no longer required for a parking project, then, if such real property was acquired at the cost and expense of the city, the authority shall have power to convey it without consideration to the city, or, if such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease or otherwise dispose of said real property and shall retain and have the power to use the proceeds of sale, rentals or other moneys derived from the disposition thereof for its purposes. (1951, c. 779, s. 8.)

§ 160-483. Contracts.—The authority shall let contracts in the manner provided by law for contracts of the city. (1951, c. 779, s. 9.)

§ 160-484. **Moneys of the authority.** — All moneys of the authority shall be paid to the treasurer of the city as agent of the authority, who shall designate depositories and who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out on checks of the treasurer on written requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions. All deposits of such moneys shall be secured in the manner provided by law for securing deposits of moneys of the city. The city accountant of the city and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall cause an annual audit of its accounts to be made by a certified public accountant or firm of certified public accountants, and shall cause a copy of the report of each such audit to be filed with the city clerk, who shall present the same to the city council. The authority shall have power, notwithstanding the provisions of this section to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any moneys of the authority or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits. (1951, c. 779, s. 10.)

§ 160-485. **Bonds of the authority.**—1. The authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any purpose mentioned in § 160-481, including the acquisition, construction, reconstruction and repair of personal and real property of all kinds deemed by the authority to be necessary or desirable to carry out such purpose, as well as to pay such expenses as may be deemed by the authority necessary or desirable to the financing thereof and placing the project or projects in operation, in the aggregate principal amount of not exceeding three million dollars (\$3,000,000.00). The authority shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. In computing the total amount of bonds of the authority which may at any time be outstanding the amount of the outstanding bonds to be refunded from the proceeds of the sale of new bonds or by exchanging for new bonds shall be excluded. Except as may otherwise be expressly provided by the authority, the bonds of

every issue shall be general obligations of the authority payable out of any moneys or revenues of the authority, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the negotiable instruments law (constituting chapter 25 of the General Statutes) the bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the negotiable instruments law, subject only to the provisions of the bonds for registration.

2. The bonds shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times, not exceeding 30 years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable annually or semi-annually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption prior to maturity, at par value, as such resolution or resolutions may provide.

3. Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized as to

(a) Pledging all or any part of the revenues of a parking project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(b) The rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(c) The setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(d) Limitations on the right of the authority to restrict and regulate the use of a project;

(e) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or of any issue of the bonds;

(f) Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto; and the manner in which such consent may be given;

(h) Limitations on the amount of moneys derived from a parking project to be expended for operating, administrative or other expenses of the authority;

(i) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to § 160-493, and limiting or abrogating the right of the bondholders to appoint a trustee under said section or limiting the rights, duties and powers of such trustee;

(j) Any other matters, of like or different character, which in any way affect the security or protection of the bonds.

4. It is the intention hereof that any pledge of revenues or other moneys made by the authority shall be valid and binding from the time when the pledge is made; that the revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Statutory provisions relating to the recording or registering of instruments creating liens shall not apply to the lien of any such pledge.

5. Neither the members of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

6. The authority shall have power out of any funds available therefor to purchase bonds. The authority shall cancel such bonds.

7. In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in the State of North Carolina. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the construction, maintenance, operation, repair and insurance of the parking project or projects, and the custody, safeguarding and application of all moneys, and may provide that the parking project or projects shall be constructed and paid for under the supervision and approval of consulting engineers. Notwithstanding the provisions of § 160-484, the authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues of the project or projects to the trustee under such indenture or other depository and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the parking project or projects. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them, and the trustee under such trust indenture shall have and possess all of the powers which are conferred by § 160-493 upon a trustee appointed by bondholders. (1951, c. 779, s. 11.)

§ 160-486. Notes of the authority.—The authority shall have power from time to time to issue notes and from time to time to issue renewal notes (herein referred to as notes) maturing not later than five years from their respective original dates in an amount not exceeding at any time fifty thousand dollars (\$50,000.00), over and above the amount of bonds authorized by subdivision 1 of § 160-485, whenever the authority

shall determine that payment thereof can be made in full from any moneys or revenues which the authority expects to receive from any source. Such notes may, among other things, be issued to provide funds to pay preliminary costs of surveys, plans or other matters relating to any proposed project. The authority may pledge such moneys or revenues (subject to any other pledge thereof) for the payment of the notes and may in addition secure the notes in the same manner and with the same effect as herein provided for bonds. Interest on the notes shall not exceed the rate of six per centum (6%) per annum. The authority shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes, or violation of any of the obligations of the authority to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. (1951, c. 779, s. 12.)

§ 160-487. Approval of local government commission; application of Local Government Act.—The issuance of all bonds and notes authorized pursuant to this article shall be subject to approval by the local government commission and such bonds and notes shall be sold by said commission in the same manner as bonds and notes of municipalities are approved and sold under the provisions of the Local Government Act. Such bonds and notes shall be delivered in the same manner as bonds and notes of municipalities are delivered under the provisions of the Local Government Act. (1951, c. 779, s. 12½.)

§ 160-488. Agreements of the State.—The State of North Carolina does pledge to and agree with the holders of the bonds that the State will not limit or impair the rights hereby vested in the authority to acquire, construct, maintain, reconstruct and operate the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged. (1951, c. 779, s. 13.)

§ 160-489. State and city not liable on bonds.—The bonds and other obligations of the authority shall not be a debt of the State of North Carolina or of the city, and neither the State nor the city shall be liable thereon, nor shall they be payable out of any funds other than those of the authority. (1951, c. 779, s. 14.)

§ 160-490. Bonds legal investments for public officers and fiduciaries.—The bonds are hereby made securities in which all public officers and bodies of this State and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, invest-

ment companies and other persons carrying on a banking business and all other persons whatsoever, except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest funds including capital in their control or belonging to them; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds shall not be eligible for the investment of funds, including capital, trusts, estates or guardianships under the control of individual administrators, guardians, executors, trustees and other individual fiduciaries. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this State and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this State is now or may hereafter be authorized. (1951, c. 779, s. 15.)

§ 160-491. Exemptions from taxation.—It is hereby found, determined and declared that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the State of North Carolina, for the improvement of their health, welfare and prosperity, and for the promotion of their traffic, and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this article, and the State of North Carolina covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of the project or any tolls, revenues or other income received by the authority and that the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. (1951, c. 779, s. 16.)

§ 160-492. Tax contract by the State.—The State of North Carolina covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the authority pursuant to this article, in consideration of the acceptance of and payment for the bonds, that the bonds of the authority issued pursuant to this article and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds, shall at all times be free from taxation except for transfer and estate taxes. (1951, c. 779, s. 17.)

§ 160-493. Remedies of bondholders.—1. In the event that the authority shall default in the payment of principal of or interest on any issue of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the authority shall fail or refuse to comply with the provisions of this article, or shall default in any agreement made with the holders of any issue of the bonds, the holders of twenty-five per centum (25%) in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the register of deeds of the county in which the authority is located, and proved or acknowledged in the same manner as

a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five per centum (25%) in principal amount of such bonds then outstanding shall, in his or its own name:

(a) By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the bondholders, including the right to require the authority to collect revenues adequate to carry out any agreement as to, or pledge of, such revenues, and to require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this article;

(b) Bring suit upon such bonds;

(c) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the holders of such bonds;

(d) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds;

(e) Declare all such bonds due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum (25%) of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

3. The superior court of the county in which the authority is situated shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders.

4. Before declaring the principal of all such bonds due and payable, the trustee shall first give 30 days' notice in writing to the authority.

5. Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders, shall take possession of all moneys and other property derived from or applicable to the construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with any construction thereon which the authority is under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements, and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

6. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders in the enforcement and protection of their rights. (1951, c. 779, s. 18.)

§ 160-494. **Actions against the authority.**—In every action against the authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least 30 days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for 30 days after such presentment. (1951, c. 779, s. 19.)

§ 160-495. **Termination of authority.**—Whenever all of the bonds issued by the authority shall have been redeemed or cancelled, the authority shall cease to exist and all rights, titles and interests and all obligations and liabilities thereof vested in or possessed by the authority shall thereupon vest in and be possessed by the city. (1951, c. 779, s. 20.)

§ 160-496. **Inconsistent provisions in other acts superseded.**—Insofar as the provisions of this article are inconsistent with the provisions of any other act, general or special, the provisions of this article shall be controlling. This article shall not repeal or modify any other act providing a different method of financing parking projects in cities, the powers conferred hereby being intended to be in addition to and not in substitution for the powers conferred by other acts. (1951, c. 779, s. 22.)

Art. 39. Financing Parking Facilities.

§ 160-497. **Declaration of public necessity.**—It is hereby determined and declared that the free circulation of traffic of all kinds through the streets of the municipalities in the State is necessary to the health, safety and general welfare of the public, whether residing in such municipalities or travelling to, through or from such municipalities in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion in the streets of such municipalities; that the parking of motor vehicles in the streets has contributed to this congestion to such an extent as to constitute at the present time a public nuisance; that such parking prevents the free circulation of traffic in, through and from such municipalities, impedes the rapid and effective fighting of fires and disposition of police forces, threatens irreparable loss in values of urban property which can no longer be readily reached by vehicular traffic, and endangers the health, safety and welfare of the general public; that the regulation of traffic on the streets by the installation of parking meters and the imposition of charges in connection with such on-street parking facilities has not relieved this congestion except to a limited extent; that this traffic congestion is not capable of being adequately abated except by provisions for sufficient off-street parking facilities; that adequate off-street parking facilities have not been provided and parking spaces now existing must be forthwith supplemented by off-street parking facilities provided by public undertaking; and that the enactment of the provisions of this article is hereby declared to be a public necessity. (1951, c. 704, s. 1.)

§ 160-498. **Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "municipality" shall mean any city or town in the State, whether incorporated by special act of the General Assembly or under the general laws of the State, which may desire to finance parking facilities under the provisions of this article.

(b) The term "governing body" shall mean the board or body in which the general legislative powers of a municipality are vested.

(c) The words "parking facilities" shall mean and shall include lots, garages, parking terminals or other structures (either single or multi-level and either at, above or below the surface) to be used solely for the off-street parking of motor vehicles, open to public use for a fee, and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or the operation thereof.

(d) The word "cost" as applied to parking facilities or to extensions or additions thereto shall include the cost of acquisition, construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and interests acquired by the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, financing charges, interest prior to and during construction and, if deemed advisable by the governing body, for one year after completion of construction, cost of engineering and legal services, plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, the financing thereof and the placing of the parking facilities in operation.

(e) The word "revenues" when applied to revenues of the parking facilities shall mean the net revenues derived in any fiscal year from the operation of the parking facilities after paying all expenses of operating, managing and repairing such parking facilities. (1951, c. 704, s. 2.)

§ 160-499. **General grant of powers.**—The governing body of any municipality in the State is hereby authorized and empowered:

(a) To acquire, construct, reconstruct, equip, improve, extend, enlarge, maintain, repair and operate parking facilities within the corporate limits of such municipality;

(b) To issue bonds of the municipality as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, equipment, improvement, extension or enlargement;

(c) To establish and revise from time to time and to collect (such collection to be made by the use of parking meters, if deemed desirable by the governing body) rates, rentals, fees and other charges for the services and facilities furnished by such parking facilities, and to establish and revise from time to time regulations in respect of the use, operation and occupancy of such parking facilities or part thereof;

(d) To accept from any authorized agency of the federal government loans or grants for the planning, construction or acquisition of any parking facilities and to enter into agreements with such agency respecting any such loans or grants, and to receive and accept aid and contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants or contributions may be made;

(e) Subject to any provisions or restrictions which may be set forth in the ordinance authorizing bonds, to acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any parking facilities;

(f) To lease all or any part of such parking facilities upon such terms and conditions and for such term of years as it may deem advisable to carry out the provisions of this article;

(g) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article, and to employ such engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other employees and agents as it may deem necessary, and to fix their compensation; and

(h) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1951, c. 704, s. 3.)

§ 160-500. Issuance of bonds.—Subject to the provisions of The Municipal Finance Act of 1921, as amended, subchapter III, chapter 160 of the General Statutes, but notwithstanding any limitation or indebtedness contained therein or in any other law, any municipality may issue its negotiable bonds for the purpose of paying the cost of parking facilities, for the payment of which bonds, there shall be pledged, in addition to the full faith, credit and taxing power of the municipality, (a) the revenues of such parking facilities, (b) all the revenues of on-street parking meters collected in each fiscal year following the issuance of all or any part of such bonds (after paying any operating deficit of such parking facilities therewith) until a reserve has been established and is maintained at the close of each fiscal year which shall equal in amount at least ten per centum (10%) of the principal amount of such bonds then outstanding or at least the total amount of principal of and interest on such bonds falling due in the next ensuing fiscal year, whichever is greater, and (c) the proceeds of special assessments levied as hereinafter provided upon benefited property, except that all or any part of such proceeds may be applied to the payment of notes issued in anticipation of receipt of the proceeds of sale of such bonds, but the amount of such bonds authorized shall be reduced by the amount of such payments.

Such bonds shall mature at such time or times, not exceeding 40 years from their respective dates, and may be subject to such terms of redemption with or without premium, as the governing body

may provide, with the approval of the local government commission. The governing body may authorize the purchase and retirement of any of such bonds with funds pledged to their payment at market prices not in excess of the redemption value of the bonds so purchased.

Money may be borrowed in anticipation of the receipt of the proceeds of sale of such bonds under the provisions of § 160-375 of the General Statutes, and notes may be issued therefor as provided in § 160-376 of the General Statutes.

Bonds and notes issued under the provisions of this article shall be subject to the provisions of the Local Government Act. (1951, c. 704, s. 4.)

Editor's Note.—The first "or" in line five of the section was probably intended to be "of", although "or" is the language of the enactment.

§ 160-501. Parking meters.—The governing body of any municipality in the State is hereby authorized to install parking meters, or cause the same to be installed, at or near the curbs of the streets within the municipality and to adopt such regulations and impose such charges in connection with any parking meters heretofore or hereafter installed as it may deem advisable. The governing body is further authorized to combine into a single project for financing purposes and for the more adequate regulation of traffic and relief of congestion such parking meters or any portion thereof with any parking facilities financed by bonds issued under the provisions of this article and to pledge to the payment of such bonds, as provided in § 160-500, the revenues derived from such parking meters. (1951, c. 704, s. 5.)

§ 160-502. Pledge of revenues.—The revenues derived from any parking facilities for which bonds shall be issued under the provisions of this article shall be pledged to the payment of the principal of and the interest on such bonds. Subject to the provisions of § 160-500, the governing body shall also pledge to the payment of such principal and interest the revenues derived from on-street parking meters, and all or any part of the special assessments levied as hereinafter provided upon benefited property. (1951, c. 704, s. 6.)

§ 160-503. Authorizing ordinance.—Any ordinance authorizing the issuance of bonds under the provisions of this article shall contain the following matters, in addition to all other matters required to be stated therein by The Municipal Finance Act:

(1) A statement that the revenues of on-street parking meters shall be pledged to the payment of such bonds as provided in this article; and

(2) A statement that special assessments shall be levied on benefited property, giving a description of the property which is to be specially benefited and is to be assessed, the basis of assessment, the proportion of the cost to be specially assessed, and the number of equal annual installments in which assessments may be paid. Such installments shall be not less than five nor more than twenty. (1951, c. 704, s. 7.)

§ 160-504. Special assessments.—Any municipality in the State shall have power, through its governing body, upon petition made as herein provided, to provide for the levy of special assessments on benefited property.

A. The Petition.—A petition shall be submitted to the governing body of any municipality in the State requesting such governing body to issue bonds for the purpose of paying the cost of parking facilities. Such petition shall (a) designate by a brief description the parking facilities proposed; (b) request that the same be provided as authorized by this article; (c) set forth a description of the property which is to be specially benefited and is to be assessed; (d) request that such proportion of the cost of such parking facilities as may be specified in the petition be specially assessed against the property in the benefited area; (e) set forth the basis on which such assessments shall be assessed, whether by lineal feet of frontage on streets in the benefited area, by square feet of floor space on property fronting on streets in the benefited area, or by some other fair basis as determined upon by the petitioners. The petition shall be signed by at least a majority in number of the owners of property in the benefited area, who must represent at least a majority of the lineal feet of frontage, square feet of floor space, or other basis on which the assessments shall be assessed. For the purpose of the petition, all the owners of undivided interests in any land shall be deemed and treated as one person and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interests: Provided, that for the purpose of this section the word "owners" shall be considered to mean the owners of any life estate, of an estate by entirety, or of the estate of inheritance, and shall not include mortgages, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lien holders, or persons having inchoate rights of courtesy or dower. Upon the filing of such petition with the municipality, the clerk, or other person designated by the governing body thereof, shall investigate the sufficiency of the petition, and if it is found to be sufficient, he shall certify the same to the governing body.

B. The Preliminary Resolution.—Upon the finding by the governing body that the petition provided for in the preceding subsection is sufficient, the governing body shall adopt a resolution which shall contain substantially the following:

(1) That a sufficient petition has been filed requesting the issuance of bonds for the purpose of paying the cost of parking facilities;

(2) A brief description of the proposed parking facilities;

(3) A description of the property to be specially benefited and assessed, the proportion of the cost of the parking facilities to be specially assessed, the basis of assessment, and the number of equal annual installments in which the assessments may be paid;

(4) A notice of the time and place, when and where a public hearing will be held to hear the objections of all interested persons to (i) the proposed parking facilities, (ii) the property which is to be specially benefited and assessed, (iii) the proportion of the cost of the parking facilities to be specially assessed, (iv) the basis of assessment, and (v) the number of equal annual installments in which the assessments may be paid, which notice shall state that a petition has been filed requesting the issuance of bonds for the purpose of

paying the cost of the parking facilities, shall contain a brief description of the proposed parking facilities and a description of the property to be specially benefited and assessed, shall show the proportion of the cost of the parking facilities to be specially assessed, the basis of assessment, and the number of equal annual installments in which the assessments may be paid, and such notice shall also state that all objections shall be made in writing, signed in person or by attorney, and filed with the clerk of the municipality at or before the time of such hearing, and that any such objections not so made will be waived.

Said notice shall be published one time in a newspaper published in the municipality, or if there be no such newspaper, such notice shall be posted in three public places in the municipality for at least five days, the date of publication or posting of the notice to be not less than ten days prior to the date fixed for the hearing.

C. Public Hearing on Preliminary Resolution.—At the time for the public hearing, or at some subsequent time to which such hearing shall be adjourned, the governing body shall consider such objections as have been made in compliance with subsection B (4) above. Any objection not made in writing, signed in person or by attorney, and filed with the clerk of the municipality at or before the time or adjourned time of such hearing shall be considered as waived; and if any such objection shall be made and shall not be sustained by the governing body, the adoption of the ordinance as provided in the next following subsection, shall be the final adjudication of the issues presented, unless an action or proceeding is commenced to set aside the ordinance or to obtain other relief upon the ground that the ordinance is invalid as provided by § 160-385 of the General Statutes.

D. Authorizing Ordinance.—The governing body shall thereafter determine in its discretion whether or not to proceed with the acquisition or construction of such parking facilities, and if it decides to proceed, it shall then adopt a bond ordinance in accordance with the provisions of § 160-503.

E. Amount of Assessment Ascertained.—Upon the completion of the proposed parking facilities the governing body shall compute and ascertain the total cost thereof. The governing body must thereupon make an assessment in accordance with the terms of the bond ordinance, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed.

F. Filing of Assessment Roll; Publication of Notice of Hearing Thereon.—After such assessment roll has been completed, the governing body of the municipality shall cause it to be filed in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published one time, in some newspaper published in the municipality, or if there be no such newspaper the governing body shall cause to be posted in three public places in the municipality, a notice of the completion of the assessment roll, setting forth a description in general terms of the parking facilities, and stating the time fixed for the meet-

ing of the governing body for the hearing of objections to the special assessments, such meeting to be not earlier than 10 days after the first publication or from the date of posting of said notice. The governing body shall publish in said notice the amount of each assessment.

G. Hearing, Revision; Confirmation; Lien.—At the time appointed for that purpose or at some other time to which it may adjourn, the governing body of the municipality shall hear the objections to the assessment roll of all persons interested, who may appear and offer proof in relation thereto. Then or thereafter, the governing body shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on said roll, either by confirming the prima facie assessment against any or all lots or parcels described therein, or by cancelling, increasing or reducing the same, according to the special benefits which said governing body decides each of said lots or parcels has received or will receive on account of such parking facilities. If any property which may be chargeable under this article shall have been omitted from said roll or if the prima facie assessment has not been made against it, the governing body may place on said roll an apportionment to said property. The governing body may thereupon confirm said roll, but shall not confirm any assessment in excess of the special benefits to the property assessed and the assessments so confirmed shall be in proportion to the special benefits. Whenever the governing body shall confirm an assessment for parking facilities, the clerk of the municipality shall enter on the minutes of the governing body and on the assessment roll, the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the property against which the same are assessed of the same nature and to the same extent as county and city or town taxes and superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same shall be delivered to the tax collector of the municipality.

H. Appeal to Superior Court.—If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of such assessment he may, within 10 days after the confirmation of the assessment roll, give written notice to the mayor or clerk of the municipality that he takes an appeal to the superior court of the county wherein such municipality is situated, in which case he shall within 20 days after the confirmation of the assessment roll serve on said mayor or clerk a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. The remedy herein provided for any person dissatisfied with the amount of the assessment against any property of which he is the owner or in which he is interested shall be exclusive.

I. Power to Adjust Assessments.—The governing body may correct, cancel or remit any assessment for parking facilities, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto to set aside the whole of the local assessment made by it, and

thereupon to make a reassessment. The proceeding shall be in all respects as in the case of original assessment, and the reassessment shall have the same force as if it had originally been properly made.

J. Payment of Assessment in Cash or by Installments.—The property owner against whom an assessment is made shall have the option and privilege of paying the assessment in cash, or if he should so elect and give notice of the fact in writing to the municipality within 30 days after the confirmation of the assessment roll, he shall have the option and privilege of paying the assessments in installments as may have been determined by the governing body in the bond ordinance. Such installments shall bear interest at the rate of six per cent (6%) per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such property shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date.

K. Payment of Assessment Enforced.—After the expiration of 20 days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of 30 days from the first publication of the notice without any addition. In the event the assessment is not paid within such time, it shall bear interest at the rate of six per cent (6%) per annum from the date of confirmation of the assessment roll. The assessment shall be due and payable on the date on which taxes are payable, provided, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. After default in the payment of any installment, the governing body may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expenses incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose.

L. Sale or Foreclosure for Unpaid Assessments Barred in 10 Years; No Penalties.—No statute of limitation, whether fixed by law especially referred to in this article or otherwise, shall bar the right of the municipality to enforce any remedy provided by law for the collection of unpaid assessments, save from and after 10 years from default in the payment thereof, or if payable in installments, 10 years from the default in the payment of any installment. No penalties prescribed for fail-

ure to pay taxes shall apply to special assessments, but they shall bear interest at the rate of six per cent (6%) per annum only. In any action to foreclose a special assessment the costs shall be taxed as in any other civil action, and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than five per cent (5%) of the amount for which the land is sold, and one reasonable attorney's fee for the plaintiff.

M. Assessments in Case of Tenant for Life or Years.—Whenever any real estate or portion thereof is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property, the amount so assessed for such purposes, or a portion of the amount so assessed in case only a portion of the real estate is so possessed, shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate.

The respective interests of a tenant for life and the remainderman in fee shall be calculated as provided in § 37-13 of the General Statutes.

If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the municipality to a lien on such property for the same.

Any one of several tenants in common, or joint tenants, or copartners, shall have the right to pay the whole or any part of the special assessments assessed or due upon the real estate held jointly or in common, and all sums by him so paid in excess of his share of such special assessments, interest, costs and amounts required for redemption, shall constitute a lien upon the shares of his cotenant or associates, payment whereof, with interest and costs, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding: Provided, the lien provided for in this paragraph shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of the superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in such clerk's office.

N. Apportionment of Assessments.—When any special assessment has been made against any property as authorized by this article, and it is desirable that said assessment be apportioned among subdivisions of said property, the governing body of the municipality shall have authority, upon petition of the owner of said property, to apportion said assessment fairly among said subdivisions.

Thereafter, each of said subdivisions shall be relieved of any part of such original assessment except the part thereof apportioned to said subdivision; and the part of said original assessment apportioned to any such subdivision shall be of the same force and effect as the original assessment.

O. No Change of Ownership Affects Proceedings.—No change of ownership of any property or interest therein after the passage of the bond ordinance authorized by this article shall in any manner affect subsequent proceedings, and the parking facilities may be completed and assessments made thereafter as if there had been no change in such ownership.

P. Lands Subject to Assessment.—No lands in the municipality shall be exempt from special assessment as provided in this article except lands belonging to the United States and except as provided in § 160-505; and the governing bodies of municipalities and the officers, trustees or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign the petition for any parking facilities authorized by this article.

Q. Proceedings in Rem.—All proceedings for special assessment under the provisions of this article shall be regarded as proceedings in rem, and no mistake or omission as to the name of any owner or person interested in any lot or parcel of land affected thereby shall be regarded a substantial mistake or omission. (1951, c. 704, s. 8.)

§ 160-505. Exemption of property from taxation.—As adequate off-street parking facilities are essential to the health, safety and general welfare of the public, and as the exercise of the powers conferred by this article to effect such purposes constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this article constitute public property and are used for municipal purposes, no municipality shall be required to pay any taxes or assessments upon any such parking facilities or any part thereof, or upon the income therefrom, and any bonds issued under the provision of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State. (1951, c. 704, s. 9.)

§ 160-506. Alternative method.—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local. (1951, c. 704, s. 10.)

§ 160-507. Liberal construction.—The provisions of this article, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect the purposes thereof. (1951, c. 704, s. 11.)

Chapter 161. Register of Deeds.

Sec.

161-6. Deputies may be appointed; assistant registers of deeds.

161-22.1. Index and cross-index of immediate prior owners of land.

§ 161-2. **Four-year term for registers of deeds; counties excepted.**—At the general election for the year one thousand nine hundred and thirty-six and quadrennially thereafter there shall be elected in each county of this state by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alexander, Ashe, Avery, Beaufort, Cherokee, Clay, Dare, Davidson, Halifax, Haywood, Hyde, Iredell, Jackson, Johnston, Lincoln, Macon, Mitchell, Moore, Orange, Rowan, Swain, Vance and Yadkin counties. (1935, cc. 362, 392, 462; 1937, c. 271; 1939, cc. 11, 99; 1941, c. 192; 1949, cc. 756, 830.)

Editor's Note.—The 1949 amendments struck out Harnett and Bladen, respectively, from the list of excepted counties.

§ 161-6. **Deputies may be appointed; assistant registers of deeds.**—The registers of deeds of the several counties in this state are hereby authorized and empowered to appoint deputies, whose acts as such shall be valid and for which the registers of deeds shall officially be responsible. They shall file the certificate of the appointment of the deputy in the office of the clerk of the superior court, who shall record the same.

Each register of deeds is authorized and empowered, in his discretion, to designate an assistant register of deeds, who, in addition to his other powers and duties, shall be authorized to register and sign instruments and documents in the name and under the title of the register of deeds, by himself as assistant. Such signing shall be substantially as follows:

John Doe—Register of Deeds
By Richard Roe—Assistant

Such registering and signing when regular and sufficient in all other respects shall be valid for all purposes, and of the same force and effect as if such instrument or document had been registered and signed by the register of deeds personally. The register of deeds shall file with the clerk of the superior court of the county a certificate of the appointment of the assistant so designated and authorized to act in the name of the register of deeds, and the clerk of the superior court shall record such certificate. (1909, c. 628, s. 1; 1949, c. 261; C. S. 3547.)

Editor's Note.—The 1949 amendment added the second and third paragraphs.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 476.

§ 161-10. Fees of register of deeds.

Local Modification.—Beaufort: 1949, c. 368, s. 3; Cabarrus: 1945, c. 880, s. 3; Chowan: 1947, c. 490; Gaston: 1951, c. 868; Guilford: 1949, c. 602; Pender: 1945, c. 430; Perquimans: 1949, c. 664; Richmond: 1951, c. 529.

§ 161-10.1. Local variations as to fees of registers of deeds.

In Pender county the register of deeds shall be allowed the sum of fifty cents (50c) for his services in registering any crop lien. (1945, c. 432.)

In Yancey county the register of deeds shall receive the following fees:

For recording each warranty deed, mortgage deed, deed of trust, lease or contract, the sum of one dollar (\$1.00) for the first three hundred words, and the sum of twenty cents (20c) for each one hundred additional words or fraction thereof; ten cents (10c) per name for indexing and cross indexing each warranty deed, mortgage deed, deed of trust, lease or contract; the sum of fifty cents (50c) for recording, indexing and cross indexing each chattel mortgage; the sum of ten cents (10c) for recording and indexing each certificate of birth, marriage or death.

In Pamlico county, the register of deeds shall receive the following fees:

For recording chattel mortgage, statutory form, forty cents (40c); for recording each warranty deed, mortgage deed, deed of trust, contract or other instrument relating to real estate, the sum of one dollar (\$1.00) for the first 300 words thereof, and fifteen cents (15c) for each 100 additional words or fraction thereof.

In Randolph county, the register of deeds shall be allowed the sum of eighty cents (80c) for registering chattel mortgages, statutory form.

The register of deeds of Richmond county shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, seventy-five cents (75c). (1945, c. 544; 1951, c. 40, s. 3; c. 133, s. 5; c. 529.)

Local Modification.—Gaston: 1951, c. 868; Perquimans: 1949, c. 664.

§ 161-14. Registration of instruments.

Editor's Note.—

Session Laws 1945, c. 649, requires register of deeds of Pamlico county to show fees collected on recorded papers and to keep record of same.

§ 161-22.1. **Index and cross-index of immediate prior owners of land.**—Whenever any deed or other instrument conveying real property by a trustee, mortgagee, commissioner, or other officer appointed by the court, or by the sheriff under execution, is filed with the register of deeds for the purpose of being recorded, it shall be the duty of the register of deeds to index and cross-index as grantors the names of all persons recited in said instrument to be the persons whose interest in such real estate is being conveyed or from whom the title of such real estate was acquired by the grantor in such instrument.

For indexing and cross-indexing as grantors the names of persons described in this section, the register of deeds shall be allowed a fee of ten cents (10c). The provisions of this section shall not be construed to repeal any local act fixing a different fee for such indexing or cross-indexing. (1947, c. 211, ss. 1, 2.)

Chapter 162. Sheriff.

§ 162-6. Fees of sheriff.

Local Modification.—Forsyth: 1951, c. 449; Nash: 1949, c. 1046; Onslow: 1951, c. 517; Pender: 1945, c. 431; Richmond: 1947, c. 235, s. 4.

§ 162-7. Local modifications as to fees of sheriffs.

The sheriff of Bertie county shall collect for the use of Bertie county the following fees:

Serving summons in civil actions or special proceedings and serving all civil notices and citations, one dollar (\$1.00) for each defendant, or person, firm or corporation served.

Serving subpoena, fifty cents (50c) for each person.

The sheriff of Richmond county shall receive for the imprisonment of any person in a civil or criminal action, fifty cents (50c), and for release from prison, fifty cents (50c).

The sheriff of Richmond county, shall receive for feeding each prisoner in jail the sum of one dollar and fifty cents (\$1.50) per day to be paid by the board of commissioners of Richmond county. Each person imprisoned in the jail of Richmond county shall be charged one dollar and fifty cents (\$1.50) per day for board and lodging which shall be taxed in the bill of cost and paid to Richmond county. (1947, c. 755; 1951, c. 106.)

Editor's Note.—

The 1947 amendment added at the end of this section the above provisions relating to Bertie county. The 1951 amendment added at the end of this section the provi-

sions relating to Richmond county. As the rest of the section was not affected by the amendment it is not set out.

§ 162-14. Execute process; penalty for false return.

I. GENERAL CONSIDERATIONS.

Making Due Return Is an Affirmative Requirement.—The requirements that an officer having process in hand for service must note on the process the date received by him under § 1-94 and make due return thereof under § 162-14 are affirmative requirements of these sections. *State v. Moore*, 230 N. C. 648, 55 S. E. (2d) 177.

II. NEGLECT OR FAILURE TO MAKE DUE RETURN.

B. What Constitutes Failure and Defenses.

1. The Essential Elements of Failure.

Order Restraining Further Prosecution of Action in Which Execution Issued.—Execution of a judgment against defendant in summary ejectment to remove her from the land was issued and delivered to the sheriff. The sheriff failed to serve the execution because of an intervening order restraining the plaintiff from further prosecuting the summary ejectment, issued in a prior pending action to try title. Held: Motion to amerce the sheriff for failure to serve the execution was properly denied, since the sheriff had shown sufficient cause for failing to serve the execution. *Massengill v. Lee*, 228 N. C. 35, 44 S. E. (2d) 356.

2. When Return Is Sufficient.

Indorsing Process "Served."—While it is a better practice for officers to make their returns of process show with particularity upon whom and in what manner the process was served, their endorsement "served" implies service as the law requires and such return signed by the officer in his official capacity is sufficient to show prima facie service at least, and error in the date of service is immaterial. *State v. Moore*, 230 N. C. 648, 55 S. E. (2d) 177.

Chapter 163. Elections and Election Laws.

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Art. 22. Other Offenses against the Elective Franchise.

163-207. Convicted officials; removal from office.

Art. 1. Political Parties.

SUBCHAPTER I. GENERAL ELECTIONS.

§ 163-1. Political party defined; creation of new party.—A political party within the meaning of the election laws of this state shall be—

(1) Any group of voters which, at the last preceding general state election, polled for its candidate for governor, or for presidential electors, in the state at least ten per cent of the entire vote cast therein for governor, or for presidential electors; or

(2) Any group of voters which shall have filed with the state board of elections by twelve o'clock noon, on or before the first day of July preceding the day on which a general state election is held petitions signed by ten thousand persons who are at that time registered and qualified voters in this state, declaring their intention to organize a new state political party, the name of which party shall be stated on the petitions together with the name and address of the state chairman thereof, and also there shall be set forth on the

petitions a declaration of their intention of participating in the next succeeding election and affiliating with said new state political party by voting for the nominees thereof. The signatures of the persons signing such petitions shall be proven before some officer authorized to take acknowledgments of deeds and other instruments which may be recorded and such acknowledgments certified by such officer, or the genuineness of such signatures shall be proven by the oath and examination before such officer by a person in whose presence the petitions were signed and such proof certified by such officer. Such petitions must be accompanied by certificates signed by the chairmen of the county boards of elections in the several counties in which signatures to the petitions are obtained, certifying that the signatures on the petitions have been checked against the registration books and showing the number and indicating by check marks on the petitions the names of the petitioners who are duly qualified and registered voters in such county. The group of petitioners shall pay to the chairmen of the county boards of elections who check the signatures on the petitions a fee of five cents for each name checked on the petitions.

No such group of petitioners shall assume a name or designation which shall be so similar, in the opinion of the state board of elections, to that of an existing political party as to confuse or mislead the voters at an election, and which name or designation shall not contain the same word that appears in the name or designation of any existing state political party. When any new political party has qualified for participation in an election as herein required, and has furnished to the state board of elections by the first day of August prior to the election the names of such of its nominees named in a convention of such party, for state, congressional and national offices as is desired to be printed on the official ballots, it shall be the duty of the state board of elections to cause to be printed on the official ballots furnished by it to the counties the names of such nominees. No names of any candidates of any new party shall be printed on the county ballots in any county for the first election held after the filing of such petitions. When any political party fails to cast ten per cent of the total vote cast at any election for governor or for presidential electors, it shall cease to be a political party within the meaning of this chapter. Provided, that notwithstanding any other provision of this section, any group of voters which at the 1948 general election polled for its candidates for presidential electors in the state at least three per cent of the total vote cast therein for presidential electors shall be deemed to be a political party within the meaning of the election and primary laws of this state until the regular general election of 1952 is held. (1949, c. 671, s. 1.)

Editor's Note.—The 1949 amendment rewrote this section. Among other changes, the 1949 amendment to this section wrote into it a number of administrative regulations adopted by the state board of elections in 1948, some of which were found in *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379, to be repugnant to the intention of the law as then written. 27 N. C. L. Rev. 455.

This section confers upon any qualified voter the legal right to sign a petition for the creation of a new political party irrespective of whether such voter has participated in the primary election of an existing political party during the year in which the petition is signed, and regula-

tions of the state board of elections are invalid if they undertake to establish and enforce the rule that a qualified voter is ineligible to join in a petition for the creation of a new political party during a year in which he has voted in the primary election of an existing political party. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

The primary laws have no application to new political parties created by petition under this section. By express legislative declaration, such laws apply only to existing political parties "which, at the last preceding general election, polled at least three (now ten) per cent of the total vote cast therein for" governor, or for presidential electors. The law permits a new political party created by statutory petition to select its candidates in its own way. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

Duty of State Board of Elections.—Upon the filing of a petition under this section for the creation of a new political party, it is the duty of the state board of elections, in the first instance, to determine whether the petition is in accordance with the statutory requirements. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379. Note effect of 1949 amendment.

As § 163-151 specifies that ballots for use in general elections shall be printed and delivered to the county boards of elections "at least thirty days previous to the date of elections," the indisputable purpose of the provision of this section as it stood prior to the 1949 amendment concerning the time for filing a petition for the creation of a new political party was to afford the state board of elections approximately sixty days as the time in which to determine the sufficiency of the petition and to print ballots for use in the general election bearing the names of the nominees of the new political party in the event the petition for its creation was found to conform to the statute. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

Notice and Hearing Required before Rejection of Petition.—Manifestly the statutes creating the state board of elections and defining its duties contemplate that the board shall give petitioners for the creation of a new political party under this section notice and an opportunity to be heard in support of their petition before rejecting it or adjudging it insufficient. Indeed, notice and hearing in such case are necessary to meet the constitutional requirement of due process of law. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

Art. 2. Time of Elections.

§ 163-6. Special election for members of general assembly.

Nominations of candidates for a special election to fill a vacancy in the state house of representatives may be made by the several political party executive committees for each party respectively in the county in which such vacancy occurs. Nominations of candidates for a special election to fill a vacancy in the state senate in a senatorial district composed of only one county may be made by the several political party executive committees for each party respectively of such county in which said vacancy occurs. Nominations of candidates for a special election for the state senate in a senatorial district composed of more than one county where there is no party agreement for rotation of counties in the district in furnishing the candidate or candidates, may be made by the senatorial party executive committees for each party respectively of the district. Nominations of candidates for a special election for the state senate in a senatorial district composed of more than one county operating under a party rotation agreement under which one or more counties are permitted to nominate the candidate or candidates for the state senate in such district, may be made by the county political party executive committee or committees for the county or counties which, under the party rotation agreement, are entitled to select the candi-

dates. It shall be the duty of the chairman and secretary of the political party executive committees making such a nomination for state senator in a special election to certify the name and party affiliation of the nominee to the chairman of each county board of elections in said district in which the special election is to be held before the special election ballots are printed. (Rev., s. 4298; 1901, c. 89, s. 74; 1947, c. 505, s. 1; C. S. 5919.)

Editor's Note.—The 1947 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Art. 3. State Board of Elections.

§ 163-10. Duties of the state board of elections.

16. The state board of elections may, under such rules and regulations as it may prescribe, when it deems it necessary and advisable, authorize the chairman of any county board of elections to delegate the authority to any other member of such county board of elections to receive applications for and to issue absentee ballots in any primary or general election; provided the chairman of any county board of elections may in his discretion decline to delegate any other member of said board to receive applications for and to issue absentee ballots.

(1945, c. 982.)

Editor's Note.—The 1945 amendment inserted subsection 16. As the rest of the section was not affected by the amendment it is not set out.

The title of the amendatory act purports to amend this section but there is no reference to the section in the body of the act.

Board May Make Rules and Regulations Not in Conflict with Law.—The general assembly has conferred upon the state board of elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. It seems clear that this specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it. This is true because the constitution forbids the legislature to delegate the power to make law to any other body. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

Art. 4. County Board of Elections.

§ 163-11. County boards of elections; appointments; term of office and qualifications.—There shall be in every county in the state a county board of elections to consist of three persons of good moral character, who are electors in the county in which they are to act, who shall be appointed by the state board of elections on the tenth Saturday preceding each primary election, and whose terms of office shall continue for two years from the time of their appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party, and the state chairman of each political party shall have the right to recommend three electors in each county for such offices, and it shall be the duty of the state board of elections to appoint said county board from the names thus recommended: Provided, that said chairman shall recommend such persons at least fifteen days before the tenth Saturday before the primary election is to be held.

No person shall serve as a member of the county board of elections who holds any elective pub-

lic office or who is a candidate for any office in the primary or election.

No person, while acting as a member of a county board of elections, shall serve as a county campaign manager of any candidate in a primary or election. (Rev., s. 4303; 1901, c. 89, s. 6; 1933, c. 165, s. 2; 1945, c. 758, s. 1; 1949, c. 672, s. 1; C. S. 5924.)

Editor's Note.—

The 1945 amendment rewrote the proviso at the end of the first paragraph.

The 1949 amendment added the last paragraph.

§ 163-12. Meetings of county elections boards; vacancies; pay.

The members of the county board of elections shall receive in full compensation for their services five dollars per day for the time they are actually engaged in the discharge of their duties, together with such other expenses as are necessary and incidental to the discharge of their duties. Provided, that the chairman of a county board of elections shall receive for his services, when actually engaged in the discharge of his duties, the sum of seven dollars (\$7.00) per day. (Rev., s. 4304; 1901, c. 89, s. 11; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; C. S. 5925.)

Editor's Note.—

The 1945 amendment increased the compensation first mentioned in the last paragraph from three to five dollars per day, and increased the compensation of the chairman from five to seven dollars per day. As the first two paragraphs were not affected by the amendment they are not set out.

§ 163-13. Removal of member of county board of elections.

Cited in *Hill v. Britt*, 231 N. C. 713, 58 S. E. (2d) 727.

Art. 5. Precinct Election Officers and Election Precincts.

§ 163-15. Appointment of registrars and judges of elections; qualifications.—The county boards of elections, at the first meeting herein provided to be held on the seventh Saturday before each primary election, shall select one person of good repute who shall act as registrar and two other persons of good repute who shall act as judges of election for each election precinct in the respective counties for both the ensuing primary and general election, whose terms of office shall continue for two years from the time of their appointment, or until their successors are appointed and qualified, and who shall conduct the primaries and elections within their respective precincts. Each registrar and judge of election so appointed shall be able to read and write and they shall be residents of the precincts for which they are appointed. The chairman of each political party in each county shall have the right to recommend from three to five electors in each precinct, who are residents of the precinct, and who shall be of good moral character and able to read and write, for appointment as registrar and for judges of election in each precinct, and such appointments may be made from such names so recommended: Provided, such recommendations are made by the seventh Saturday before each primary election: Provided, further, that in any primary, when only one political party participates in such primary then all of the precinct officials selected for holding such primary shall be chosen only from such political party so

participating. In a primary, where more than one political party participates, and in the general election, not more than one judge of election in each precinct shall be of the same political party with that of the registrar. The county boards of elections shall also have the right to appoint assistants for such precincts where there are more than three hundred registered voters when deemed advisable. No person holding any office or place of trust or profit under the government of the United States, or of the state of North Carolina, or any political subdivision thereof, shall be eligible to appointment as an election official: Provided that nothing herein contained shall extend to officers in the militia, notaries public, justices of the peace, commissioners of public charities, or commissioners for special purposes. No person who is a candidate shall be eligible to serve as a registrar or judge or assistant.

The registrars, judges and assistants shall, before entering upon their duties, have the oath of office administered to them by some officer authorized to administer oaths. (Rev., s. 4307; 1901, c. 89, s. 8; 1933, c. 165, s. 3; 1947, c. 505, s. 2; C. S. 5928.)

The 1947 amendment rewrote the next to the last sentence of the first paragraph.

§ 163-19. Compensation for certain duties relating to elections.

Editor's Note.—Session Laws 1947, c. 496 made the compensation provided by this section applicable in Ashe county.

§ 163-20. Compensation of precinct officers.—Judges of elections and assistants shall each receive for their services on the day of a primary or election the sum of seven dollars. The registrar shall receive the sum of ten dollars per day for his services on the day of a primary or election, and shall also receive the sum of ten dollars per day for each Saturday during the period of registration that he attends at the polling place for the purpose of registering voters. Any person sworn in to act as registrar or judge of election shall receive the same compensation as the registrar and judge: Provided, that markers appointed for assisting voters in marking their ballots shall not receive any compensation therefor. Provided, further, that the registrars and judges of elections shall receive the same compensation for attending any meeting called by the chairman of the county board of elections relating to their duties in any primary or election; provided, further, that the board of commissioners of any county may provide for additional compensation for such precinct election officials. (Rev., s. 4311; 1901, c. 89, s. 42; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; 1945, c. 758, s. 3; 1947, c. 505, s. 11; 1951, c. 1009, s. 1; C. S. 5932.)

Local Modification.—Session Laws 1945, c. 263 struck out "Alleghany" from the list of counties appearing in Public Laws 1939, c. 264. Session Laws 1947, c. 496 made the compensation provided by this section applicable in Ashe county. Nash: 1951, c. 654.

Editor's Note.—

The 1945 amendment substituted "five" for "four" in line three, and "six" for "five" in lines four and six. It also added the last proviso.

The 1947 amendment struck out the words "and said registrar shall receive no other compensation whatsoever" formerly appearing at the end of the second sentence. It also struck out from the end of the last proviso the words

"in precincts where the duties of those election officials require services for a substantial period of time after the closing of the polls."

The 1951 amendment substituted "seven" for "five" in line three and "ten" for "six" in lines four and six.

§ 163-21. Duties of registrars and judges of election.

2. The enforcement of peace and good order in and about the place of registration and voting. They shall especially keep the place of access of the electors to the polling place open and unobstructed, prevent and stop improper practices or attempts to obstruct, intimidate or interfere with any elector in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and may eject from the polling place any such challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult or disorder. In the discharge of these duties they may call upon the sheriff, police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election law, but such arrest shall not prevent such person from registering or voting if he is entitled so to do. The sheriff, all constables, police officers and other officers of the peace, shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws. The registrar and judges of election of any precinct, or any two of such election officials, shall have the authority to deputize any person or persons as police officers to aid in maintaining order at a voting precinct.

(1947, c. 505, s. 3.)

The 1947 amendment added the last sentence of subsection 2. As the rest of the section was not affected by the amendment it is not set out.

Art. 6. Qualification of Voters.

§ 163-25. Qualifications of electors; residence defined.—Subject to the exceptions contained in the preceding section, every person born in the United States and every person who has been naturalized, and who shall have resided in the state of North Carolina for one year and in the precinct, ward, or other election district in which he offers to vote, four months next preceding the election shall, if otherwise qualified as prescribed in this chapter, be a qualified elector in the precinct, or ward or township in which he resides; Provided, that removal from one precinct, ward, or other election district to another in the same county shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which he has removed until four months after such removal.

(1945, c. 758, s. 7.)

Editor's Note.—

The 1945 amendment inserted in lines two and three of the first paragraph the words "every person born in the United States and." As the rest of the section was not affected by the amendment it is not set out.

Meaning of "Residence" Is Judicial Question.—The meaning of the term "residence" for voting purposes, as used in Art. VI, § 2. of the Constitution of North Carolina, is a judicial question. It cannot be made a matter of legislative construction. This is true because the legislature cannot prescribe any qualifications for voters different from those found in the organic law. *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

"Residence" Is Synonymous with Domicile.—Residence as

a prerequisite to the right to vote in this state, within the purview of N. C. Constitution, Art. VI, § 2, is synonymous with domicile, which denotes a permanent dwelling place to which a person, when absent, intends to return. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12.

Evidence Insufficient to Show Loss of Domicile.—Uncontroverted testimony which discloses that electors whose votes were challenged on the ground of nonresidence left their homes and moved to another state or to another county in this state for temporary purposes, but that at no time did they intend making the other state or the other county in this state a permanent home, is insufficient to support a finding that they had lost their domicile in the county for the purpose of voting. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12.

The indefiniteness of an elector's intention to return to the county of his domicile is insufficient to establish loss of voting residence—no other having been acquired or intended. State v. Chaplin, 229 N. C. 797, 48 S. E. (2d) 37.

Art. 7. Registration of Voters.

§ 163-29. Qualification as to residence for voters; oath to be taken.—In all cases the applicant for registration shall be sworn before being registered, and shall state as accurately as possible his name, age, place of birth, place of residence, stating ward if he resides in an incorporated town or city; and any other questions which may be material upon the question of identity and qualification of the said applicant to be admitted to registration. If the applicant for registration has removed from another precinct, ward or election district in the same city, town or township since his or her last registration, such applicant shall, before being allowed to register, fill out and sign a printed transfer certificate, furnished to the registrars by the chairman of the county board of elections prior to the opening of the registration period, notifying the registrar of the precincts from which the applicant has removed of the removal of said applicant from the former precinct and authorizing the said registrar to remove his or her name from the old precinct registration book. The transfer certificate shall be in substantially the following form:

To the Registrar of precinct, county.

I hereby certify that I have removed my residence from voting precinct, where I was a registered elector, to voting precinct within the same city, town or township, and I have this day applied for registration before the undersigned Registrar of this precinct where I now reside, and I hereby authorize you to remove my name from your registration book as I am no longer qualified to vote in your precinct.

Signed this day of, 19...

.....

Signature of Applicant

Witness:

..... Registrar

..... Precinct

..... Address

It shall be the duty of the registrar to sign said certificate as a witness to the applicant's signature and immediately after the close of the registration period the registrar shall mail all of such certificates so filled out to the chairman of the county board of elections. Upon the receipt of such certificates from the registrars, it shall be the duty of the chairman of the county board of elections to mail immediately such certificates to the respective registrars of the precincts from which the applicants have removed, and upon receipt of

same the registrars shall cancel the registration of such applicants on the books.

The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the qualification of the applicant. And thereupon, if the applicant shall be found to be duly qualified and entitled to be registered as an elector, the registrar shall register the applicant, giving his race opposite his name, and shall record his name, age, residence, place of birth, and the township, county, or state from whence he has removed, in the event of a removal, in the appropriate column of the registration books, and the registration books containing the said record shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration. Every person qualified as an elector shall take the following oath:

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of North Carolina not inconsistent therewith; that I have been a resident of the State of North Carolina for one year and of township (precinct or ward) for four months; or that I was a resident of township (ward or precinct) on the day of (being four months preceding the election) and removed therefrom to township (ward or precinct), where I have since resided; that I am twenty-one years of age; that I have not registered for this election in any other ward or precinct or township. So help me, God.

And thereupon the said person, if otherwise qualified, shall be entitled to register. (Rev., s. 4319; 1901, c. 89, s. 12; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; C. S. 5940.)

Editor's Note.—

The 1951 amendment rewrote the part of this section pertaining to transfers.

§ 163-31. Time when registration books shall be opened and closed; oath and duty of registrar; new registration when books destroyed or mutilated.

In the event that the registration books for any township, ward or precinct shall, prior to thirty days preceding any primary, general, or special election, be destroyed from fire or other cause or shall become mutilated to the extent that such books can no longer be used, new registration books shall be provided for the registration of voters in such township, ward or precinct and such new registration books shall be opened for the registration of voters at the times and places and in the manner prescribed by this section. Such new registration books may thereafter be used in such township, ward or precinct for all general, primary or special elections, including municipal elections. Notice of such new registration shall be given by advertisement in a newspaper published in the municipality or county in which such township, ward or precinct is located at least ten days before the opening of the new registration books and such notice shall also state the location of the polling place and the name of the registrar for such township, ward or precinct. When a special registration is held under this law the Saturday for challenge day may be combined with the last Saturday for registration, so that voters may be registered on challenge day when

time does not permit an extra Saturday for challenge day prior to any primary or election. (Rev., s. 4323; 1901, c. 89, s. 18; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947 c. 475; C. S. 5947.)

Editor's Note.—The 1947 amendment added the above paragraph at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Art. 9. New State-Wide Registration of Voters.

§ 163-43. State-wide revision of registration books and relisting of voters in one general registration book.—Prior to the next state-wide primary election of 1950 there shall be a revision made of the registration books and a relisting of the registered voters into one new general registration book for each and every precinct in the state in the manner hereinafter provided. The state board of elections shall, as soon as possible after April 13, 1949, meet and adopt a new form of a general registration book to be substituted for the separate party primary registration books and the general election registration book now used in each voting precinct in this state, which new general registration book shall be the only kind of registration book to be used hereafter in each precinct in all primaries and general elections held in this state: Provided, the state board of elections may authorize any county board of elections, at the request of any county board and at such county's expense, to use a modern loose-leaf registration book system in the larger precincts instead of the new registration book to be furnished by the state. The new general registration book shall be so prepared as to contain all of the information pertaining to a registered voter now required by law, except the new registration book shall also contain a column or space to enter the party affiliation of each registered voter. The new registration book shall also have printed on each page thereof a column index giving the first two letters of the surnames and the pages where such voters are registered so that a registrar can turn immediately to the page where a voter is registered and find the name.

The state board of elections shall, through the state department of purchase and contract, order the printing or purchase of a sufficient number of the said new general registration books to furnish one for each voting precinct in the state, the cost of which shall be paid for by the state out of the contingency and emergency fund. (1939, c. 263, s. 1; 1949, c. 916, s. 1.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ 163-44. State board of elections to distribute new registration books and instruct county election officials.—As soon as the new general registration books have been printed the state board of elections shall furnish to the chairman of each county board of elections in this state a sufficient number of the new registration books to supply one for each voting precinct in each county. These books shall be distributed to the county election chairman in time for the names from the old primary and general election registration books to be transcribed to the new book prior to the 1950 registration period. The state board of elections shall also furnish written instructions to each county election chairman and to the various registrars as to their duties with respect to the

use of the new general registration book system. (1949, c. 916, s. 2.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ 163-45. County election board chairman to deliver new registration books to registrars and instruct them on their use.—After the receipt of the new registration books by a chairman of a county election board from the state board of elections, the chairman shall call a meeting of all of the registrars in his county for the purpose of delivering said new books to his registrars and instructing the registrars as to their duties relative thereto. Each registrar shall be entitled to be paid compensation and travel expense by the county for attending this meeting. (1949, c. 916, s. 3.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ 163-46. How new general registration book is to be used by registrar.—It shall be the duty of each registrar, after receiving his new general registration book from the chairman, to transcribe to the new general registration book in alphabetical order the names of all persons who are registered in the present party primary and general election registration books and shall indicate opposite the name of each registrant, in the column showing party affiliation, the political party affiliation of each such registrant as shown on the present party primary registration book, in which such person is now registered. In those cases where a person is now registered in the general election registration book and is not registered in a party primary registration book, no party affiliation will be placed opposite the name of such person when transcribed on the new book, but such person will not be permitted to vote in any party primary held thereafter unless or until such person declares his party affiliation to the registrar on the day of a party primary or registration period, and then only in the primary of such political party with which such person so declares his or her party affiliation and requests the registrar to record that party affiliation opposite his or her name on the new registration book.

It shall likewise be the duty of a registrar, when any person applies for new registration during the regular registration periods held hereafter prior to any primary or general election, to request the applicant to state his or her political party affiliation and record that party affiliation on the new book opposite the name. If such applicant refuses to declare his or her party affiliation upon request, then the registrar shall register such applicant's name, if found qualified to register, on the new registration book without indicating any party affiliation opposite the name, but the registrar shall then advise such person that he or she cannot vote in any party primary election but only in a general election held thereafter. If such applicant for registration states to the registrar that he or she is an independent, indicating affiliation with no political party, the registrar shall register such applicant as an independent, if found qualified to register, and shall likewise advise such person that he or she cannot vote in any party primary election held thereafter as he or she does not affiliate with any political party.

In transcribing the names of registrants from the old books to the new general registration book, the registrar shall not transcribe the names of any persons known to the registrar to be dead, or who have moved their permanent residence to another precinct, county or state; however, if any person whose name has been so removed from the books because of removal of residence should appear at the same polling place on election day and satisfy the registrar that he or she is entitled under the law to vote in that precinct, the registrar shall put such person's name back on the new book on election day and be permitted to vote there.

In lieu of a registrar transcribing the names of registrants from the old to the new general registration book, the county board of elections, in its discretion, may employ such clerks or assistants as it may desire to do the work.

Each registrar, or other persons, who transcribes the names of registrants from the old books to the new registration book shall be paid such compensation for same as the county board of commissioners may fix as proper. (1949, c. 916, s. 4.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ 163-47. New registration in discretion of county board of elections.—In lieu of the procedure prescribed in this article for the transcription of registrants from the present registration books to the new general registration book, any county board of elections may, in its discretion, order a new registration of the voters in any county or precincts, but in any new registration only the new general registration book shall be used in each precinct, and the party affiliation of the new registrants indicated thereon. (1939, c. 263, s. 2½; 1949, c. 916, s. 5.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ 163-48. Registration and poll books to be returned to chairman of county election board.—On the day of the county canvass of votes after a primary or an election, each registrar shall return the registration book and the poll book for his precinct to the chairman of the county board of elections. The registrars shall be responsible for the safekeeping of the registration and poll books while in their custody. (1939, c. 263, s. 3½; 1949, c. 916, s. 6.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ 163-49. Chairman of county board of elections to keep registration books.—When not in use for a primary or an election, all of the registration books and poll books shall be in the custody and safekeeping of the chairman of the county board of elections. It shall be his duty to keep these books in a safe and secure place where they may not be tampered with, stolen or destroyed, and, if possible, they shall be kept in a fireproof vault. The chairman may, in his discretion, permit these books while in his custody to be inspected or copied, but only under his supervision. (1949, c. 916, s. 7.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ 163-50. Change of party affiliation.—No registered elector shall be permitted to change his

party affiliation for a primary or second primary after the close of the registration period. Any elector who desires to change his party affiliation for a primary from the registration book on which registered to that of another party shall, during the registration period only, go to the registrar of his precinct and request that such change be made on the general registration books. Before being permitted to change his party affiliation, for the purpose of participating in a primary election, however, such elector shall be required by the registrar to take the oath of party loyalty to the party to which he wishes to now affiliate, and the registrar shall thereupon administer to the said elector the following oath:

I,, do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the party to the party, and that such change of affiliation be made on the party registration books, and I further solemnly swear (or affirm) that I will support the nominees of the party to which I am now changing my affiliation in the next election and the said party nominees thereafter until I shall, in good faith, change my party affiliation in the manner provided by law, so help me God.

If at any time the chairman of the board of elections or the registrar of any precinct shall be satisfied that an error has been made in designating the party affiliation of any voter on the general registration book then and in all such events the chairman of the county board of elections or the registrar, having the custody of the registration book may make the necessary correction upon the voter taking the oath of party loyalty in substance of the form set forth in this section. (1939, c. 263, s. 6; 1949, c. 916, s. 8.)

Editor's Note.—The 1949 amendment substituted the words "general registration books" for the words "party primary books" at the end of the second sentence. It also substituted "general registration book" for "primary registration books" in lines four and five of the last paragraph.

§ 163-51. Willful violations made misdemeanor.—Any chairman of a county board of elections or any registrar who willfully and knowingly refuses or fails to comply with the provisions of this article with respect to his duties as herein specified shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine, imprisonment, or both, in the discretion of the court. (1939, c. 263, s. 7; 1949, c. 916, s. 9.)

Editor's Note.—The 1949 amendment inserted in line two the words "or any registrar" and struck out all of the former second paragraph relating to violations by registrars.

Art. 10. Absent Voters.

§ 163-54. Absentee voting in general elections.
Effect of Mistake or Misconduct of Election Officials.—Persons in all respects qualified to cast absentee ballots will not be disfranchised for the mistake or even willful misconduct of election officials in performing their duties when the mistake or misconduct does not amount to coercion, fraud or imposition and it appears that the ballots expressed only the free choices of the electors themselves. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12.

§ 163-55. Written application for official ballot.
Cross Reference.—See notes to §§ 163-54, 163-56, 163-58.
Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12.

§ 163-56. Issuance of official ballot.

As to delegation of authority of chairman to other members of board, see § 163-56, subsection 16.
Delivery of Ballot to Voter.—The fact that the chairman

of the county board of elections, in company with candidates in the election, personally delivers absentee ballots to absentee voters at their temporary residence in another state or county is insufficient, of itself, to vitiate their votes, there being no evidence remotely suggesting coercion, fraud or imposition. *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

§ 163-57. Container envelopes provided for absentee ballots; affidavit of absent voter.

Cross Reference.—See notes to §§ 163-54, 164-56, 163-58.
Applied in *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

§ 163-58. Instructions for voting absentee ballots.

Provided, that in the case of voters who are members of the armed or auxiliary forces of the United States, the signature of any commissioned or noncommissioned officer of the rank of sergeant in the army, or chief petty officer in the navy, or the equivalent thereof, as a witness to the execution of any certificate required by this or any other section of this article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with the absentee ballots. (1939, c. 159, s. 5; 1941, c. 248; 1943, c. 736; 1945, c. 758, s. 5.)

Editor's Note.—

The 1945 amendment rewrote the proviso at the end of the section. As the rest of the section was not affected by the amendment it is not set out.

Delivery of Ballots.—The fact that the chairman of a county board of elections delivers absentee ballots in person to the voters at their temporary residences outside the boundaries of the state, and that the voters deliver the votes in the sealed containers to him in person instead of mailing them, is not sufficient, standing alone, to vitiate the votes. *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

Voters Must Be Sworn.—Where the evidence supports the findings that certain absentee voters were not sworn, the rejection of their ballots is proper. *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

Oaths Need Not Be Taken upon the Bible.—The fact that the oaths of absentee voters were not taken by them upon the Bible, but were taken with uplifted hands, does not invalidate their votes. *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

The interest of the clerk of the superior court in his own re-election, standing alone, does not disqualify him from administering oaths to absentee voters, administering the oaths being ministerial and not judicial. *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

§ 163-59. List of applications made in triplicate; certificate of correctness.

Applied in *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

§ 163-60. Delivery of absentee ballots and list thereof to registrars; list to be posted.

Applied in *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

§ 163-61. Ballots deemed voted upon delivery to precinct officials; opening, depositing and recording; rejected ballots; challenges.

Applied in *State v. Chaplin*, 228 N. C. 705, 47 S. E. (2d) 12.

§ 163-62. Challenged voter granted right of hearing before county board.—The absent voter, whose ballot has been challenged, shall, upon notice, have the right to appear before the county board of electors on canvass day and be given the opportunity to sustain the validity, and if its validity is sustained, his ballot shall be counted and added to the returns from the proper precincts; provided, that in case the voter is absent from the county or is physically unable to attend, such voter may act through any duly appointed representative. (1939, c. 159, s. 9; 1945, c. 758, s. 8.)

Editor's Note.—The 1945 amendment added the proviso.

Art. 11. Absentee Voting in Primaries by Voters in Military and Naval Service.

§ 163-70. Voting by persons in armed forces.—Any qualified voter entitled to vote in the primary of any political party, who, on the date of such primary, is in the military, naval or other armed forces of the United States may vote in the primary of the party of his affiliation in the manner as hereinafter provided. (1941, c. 346, ss. 1, 1a; 1945, c. 758, s. 4.)

Editor's Note.—

The 1945 amendment struck out the former provision that the act shall be null and void on or after the repeal of the Selective Service Act.

Art. 11A. Absentee Registration and Voting in General Elections by Persons in Military or Naval Service.

§ 163-77.9. Provisions applicable to absentee registration and voting in primaries.—The provisions of this article shall be applicable to registration and voting in primary elections, as well as in general elections. The state board of elections is hereby authorized and empowered to adopt and promulgate whatever rules and regulations it may deem necessary to conform the provisions hereof to the primary election law. (1943, c. 503, s. 9; 1945, c. 758, s. 6.)

Editor's Note.—The 1945 amendment rewrote this section.

§ 163-77.10. Printing and distribution of absentee ballots and supplies.—In order to fully carry out the purposes and intentions of this article, the state board of elections and the various county boards of elections, as the case may be, are authorized, empowered and directed to have printed, and in the hands of the proper election officials, all necessary ballots, together with the container return envelope, not later than the first day of September immediately preceding the ensuing general election, and in the event this article is made applicable to primary elections, not later than ten days after the time has expired for the filing for candidacy by county officers. (1943, c. 503, s. 10; 1949, c. 672, s. 3.)

Editor's Note.—The 1949 amendment substituted "September" for "August."

Art. 14. Counting of Ballots; Precinct Returns; Canvass of Votes and Preparation of Abstracts; Certification of Results by County Board of Elections.

§ 163-92. Chairman of county board of elections to furnish county officers certificate of election.—The chairman of the county board of elections of each county shall furnish, within ten days, the member or members elected to the house of representatives and the county officers, a certificate of election under his hand and seal. He shall also immediately notify all persons elected to the county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified. The chairman of the county board of elections shall also issue a certificate of election to each township officer elected to office within the county. (1933, c. 165, s. 8; 1947, c. 505, s. 4.)

The 1947 amendment added the last sentence.

Art. 16. State Officers, Senators and Congressmen.

§ 163-105. Special election for congressmen.—If

at any time after the expiration of any congress and before another election, or if at any time after an election, there shall be a vacancy in the representation in congress, the governor shall issue a writ of election, and by proclamation shall require the voters to meet in the different townships in their respective counties at such times as may be appointed therein, and at the places established by law, then and there to vote for a representative in congress to fill the vacancy; and the election shall be conducted in like manner as regular elections.

In the event such vacancy occurs within eight months preceding the next succeeding general election, nominations of candidates in a special election for representative in congress to fill a vacancy may be made by the several political party congressional executive committees in the district in which such vacancy occurs, for each political party respectively. It shall be the duty of the chairman and secretary of each political party congressional executive committee making such a nomination of a candidate in a special election to immediately certify to the state board of elections the name and party affiliation of the nominee so selected prior to the printing of the special election ballots.

In the event such vacancy occurs more than eight months prior to the next succeeding general election, then a special primary election shall be called by the governor. Such special primary election shall be conducted in accordance with the laws governing general primaries, except that the closing date for filing notices of authority with the state board of elections shall be fixed by the governor in his call for the primary, and shall be for the purpose of nominating candidates, to be voted upon thereafter in a special election to be called by the governor as hereinbefore provided in the first paragraph of this section. The candidate elected in this special election shall fill such vacancy in the representation in congress. (Rev., s. 4369; 1901, c. 89, s. 60; 1947, c. 505, s. 5; C. S. 6007.)

The 1947 amendment added the second and third paragraphs.

Art. 17. Election of Presidential Electors.

§ 163-108. Arrangement of names of presidential electors.—The names of candidates for electors of president and vice-president of any political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party shall not be placed on the ballot, but shall after nomination be filed with the secretary of state. In place of their names there shall be printed first on the ballot the names of the candidates for president and vice-president, respectively, of each party or group of petitioners who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party and they shall be arranged under the title of the office. A vote for such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state. (Rev., s. 4372; 1901, c. 89, s. 78; 1933, c. 165, s. 11; 1949, c. 672, s. 2; C. S. 6010.)

Editor's Note.—The 1949 amendment inserted the clauses as to having qualified as a political party under § 163-1.

Art. 18. Miscellaneous Provisions as to General Elections.

§ 163-113. Agreements for rotation of candidates in senatorial districts of more than one county.—When any senatorial district consists of two or more counties, in one or more of which the manner of nominating candidates for legislative offices is regulated by statute, and the privilege of selecting the candidate for senator, or any one of the candidates for senator, of any political party (as the words "political party" are defined in the first section of this subchapter) in the senatorial district, is, by agreement of the several executive committees representing that political party in the counties constituting the district, conceded to one county therein, such candidate may be selected in the same manner as the party's candidates for county officers in the county, whether in pursuance of statute or under the plan of organization of such party. All nominations of party candidates for the office of senator, made as hereinbefore provided, shall be certified by the chairman of the county board of elections of the county in which the nomination is made, to each chairman of the county board of elections in all of the counties constituting the senatorial district, and it shall be the duty of each chairman of the other counties to which the nominations are certified to print the name or names of the nominee or nominees on the official county ballot for the general election. (1911, c. 192; 1947, c. 505, s. 6; C. S. 6014.)

The 1947 amendment rewrote the second sentence.

SUBCHAPTER II. PRIMARY ELECTIONS.

Art. 19. Primary Elections.

§ 163-117. Date for holding primaries.

This subchapter shall not apply to the nomination of candidates for presidential electors. Presidential electors shall be nominated in a State convention of each political party as defined in § 163-1 unless otherwise provided by the plan of organization of such political party. One presidential elector shall be nominated from each congressional district and two from the State at large. (1915, c. 101, s. 1; 1917, c. 218; 1939, c. 196; 1951, c. 1009, s. 2; C. S. 6018.)

Local Modification.—Session Laws 1945, c. 894, repealed this article in so far as its provisions apply to the nomination of democratic candidates for the general assembly and county offices in Mitchell county.

Session Laws 1951, c. 209 made this article applicable to Graham county.

Editor's Note.—

The 1951 amendment added the above paragraph at the end of the section. As the rest of the section was not affected by the amendment, it is not set out.

The manifest purposes of the primary system set up by our laws is to secure to the members of an existing political party freedom of choice of candidates, and to confine the right of qualified electors to vote in party primaries to the primary of the existing political party of which they are members at the time of the holding of such primary. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

The primary laws have no application to new political parties created by petition under § 163-1. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

§ 163-119. Notices and pledges of candidates; with whom filed.—Every candidate for selection as the nominee of any political party for the offices of governor and all state officers, justices of the supreme court, the judges of the superior court,

United States senators, members of congress, and solicitors to be voted for in any primary election shall file with and place in the possession of the state board of elections, by 12:00 o'clock noon on or before the tenth Saturday before such primary election is to be held, a notice and pledge in the following form, the blanks being properly filled in and the same signed by the candidate:

"I hereby file my notice as a candidate for the nomination as in the primary election to be held on I affiliate with the party, and I hereby pledge myself to abide by the results of said primary, and to support in the next general election all candidates nominated by the party."

Every candidate for selection as the nominee of any political party for the office of state senator in a primary election, member of the house of representatives, and all county and township offices shall file with and place in the possession of the county board of elections of the county in which they reside by six o'clock p. m. on or before the sixth Saturday before such primary is to be held a like notice and pledge.

The notice of candidacy required by this section to be filed by a candidate in the primary must be signed personally by the candidate himself or herself, and such signature of the candidate must be signed in the presence of the chairman or secretary of the board of elections with whom such candidate is filing, or a candidate must have his or her signature on the notice of candidacy acknowledged and certified to by any officer authorized to administer an oath. Any notice of candidacy of any candidate signed by an agent in behalf of a candidate shall not be valid. No person shall be permitted to file as a candidate of any political party in a party primary when such person, at the time of filing his or her notice of candidacy, is registered on the registration book as an affiliate of a different political party from that party in whose primary he or she is now attempting to file as a candidate. Any unregistered person who desires to become a candidate in a party primary may do so if such person signs a written pledge with the chairman along with the filing form that he or she will, during the registration period just prior to the next primary, register as an affiliate of the political party in whose primary he or she now intends to run as a candidate. (1915, c. 101, s. 6; 1917, c. 218; 1923, c. 111, s. 13; 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; 1951, c. 1009, s. 3; C. S. 6022.)

Editor's Note.—The 1947 amendment added the first two sentences of the last paragraph. The 1949 amendment substituted in the first paragraph "12:00 noon" for "6:00 P. M." The 1951 amendment added the last two sentences of the last paragraph.

Obligation Imposed upon Candidate.—This section attempts to place upon a candidate who seeks nomination to public office in the primary election of an existing political party an obligation to adhere to such existing political party for at least a limited time in the future. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

§ 163-123. Registration of voters.

Cross Reference.—As to effect of voting in primary on future conduct of voter, see notes to § 163-126.

§ 163-126. How primary conducted; voter's

rights; polling books; information given; observation allowed.

This section secures to the member of an existing political party freedom of choice of candidates by providing that he may vote for candidates for all or any of the officers printed on the ballots of the political party with which he affiliates "as he shall elect and that he shall disclose the name of the political party printed thereon and no more." *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

Voter Need Not Support Candidates of Party in Whose Primary He Voted.—This section and § 163-123 confine the right of a qualified elector to vote in party primaries to the primary of the existing political party with which he affiliates at the time of the holding of the primary. But they do not undertake to deprive the voter of complete liberty of conscience or conduct in the future in the event he rightly or wrongly comes to the conclusion subsequent to the primary that it is no longer desirable for him to support the candidates of the party in whose primary he has voted. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379. See § 163-126.

He May Sign Petition to Establish New Party under § 163-1.—Thus regulations of the state board of elections conflict with this and other pertinent sections of this subchapter if they attempt to set up and establish a rule that voting in the primary election of an existing political party disables qualified electors to sign a petition for the creation of a new political party under § 163-1 during the year in which such primary election is held. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

§ 163-128. Names of candidates successful at primaries printed on official ballot; where only one candidate.

Cited in *Ingle v. State Board of Elections*, 226 N. C. 454, 38 S. E. (2d) 566.

§ 163-129. Primaries for county offices; candidates to comply with requirements.

Local Modification.—Stanly: 1945, c. 958.

By virtue of Session Laws 1951, c. 209 the reference to Graham county under Local Modification in the original volume should be deleted.

Editor's Note.—Session Laws 1945, c. 823 repealed Session Laws 1943, c. 349 so as to make this article applicable to Macon county.

Session Laws 1951, c. 1184, made this article applicable to Ashe county.

§ 163-143. Election board may refer to ballot boxes to resolve doubts.

Local Modification.—Brunswick: 1951, c. 462; Halifax: 1951, c. 462.

§ 163-144. Political party defined for primary elections.—A political party within the meaning of the primary law shall mean any political group of voters which, at the last preceding general election, polled at least ten per cent of the total vote cast therein for such offices as are described in § 163-1. (1915, c. 101, s. 31; 1917, c. 218; 1933, c. 165, s. 17; 1949, c. 671, s. 2; C. S. 6052.)

Editor's Note.—The 1949 amendment substituted "ten" for "three" in line four.

The primary laws have no application to new political parties created by petition under § 163-1. By express legislative declaration, such laws apply only to existing political parties "which, at the last preceding general election, polled at least three (now ten) per cent of the total vote cast therein for" governor, or for presidential electors. The law permits a new political party created by statutory petition to select its candidates in its own way. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

§ 163-147. Notice of candidacy to indicate vacancy; votes only effective for vacancy indicated.—In any primary when there are two or more vacancies for chief justice and associate justices of the supreme court of North Carolina or two vacancies in the United States senate from North Carolina to be filled by nominations all candidates

shall file with the state board of elections at the time of filing notice of candidacy a notice designating to which of said vacancies the respective candidate is asking the nomination. All votes cast for any candidate shall be effective only for the vacancy for which he has given notice of candidacy, as provided herein. (1921, c. 217; 1949, c. 932; C. S. 6055(a).)

Editor's Note.—The 1949 amendment made this section applicable to two vacancies for United States senator.

Section Is Constitutional.—This section does not contravene art. IV, § 21, of the state constitution requiring justices to be elected in the same manner as members of the general assembly, since the method of selection of nominees does not reach into and control the general election. *Ingle v. State Board of Elections*, 226 N. C. 454, 38 S. E. (2d) 566.

Effect of Failure to Indicate Vacancy.—Where there are two vacancies for the office of associate justice of the supreme court to be filled at the general election, a notice of candidacy for the nomination of a party which does not specify to which of the vacancies the candidate is asking the nomination is fatally defective. *Ingle v. State Board of Elections*, 226 N. C. 454, 38 S. E. (2d) 566.

SUBCHAPTER III. GENERAL ELECTION LAWS.

Art. 20. Election Laws of 1929.

§ 163-151. Ballots, provisions as to; names of candidates and issue.

Provided, that in printing the names of candidates on all primary or general election ballots, only the name of the candidate shall appear and no appendage such as doctor, reverend, judge, et cetera, may be used either before or following the name of any candidate. (1929, c. 164, s. 5; 1945, c. 972.)

Editor's Note.—The 1945 amendment added the above proviso at the end of this section. As the rest of the section was not affected by the amendment it is not set out.

Cited in *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

§ 163-153. Becoming candidate after the official ballots have been printed; provision as to the ballots.—If any candidate dies or resigns, or otherwise become disqualified after his name has been printed on an official election ballot, and if any person is nominated, as authorized by law, to fill such vacancy, then the name of the candidate so nominated to fill said vacancy shall not be printed upon said ballots, but the name of such candidate so nominated shall be certified by the party executive committee making the nomination to the chairman of the board of elections charged with the duty of printing such ballots, and a vote cast by a voter for the name of the candidate printed on the ballot who has either died or resigned, shall be counted as a vote for the candidate nominated to fill such vacancy and whose name is on file with said board of elections. After the official ballots have been printed by the proper election board the death or resignation of a candidate whose name is printed on the official ballot, shall not cause the said board of elections to reprint the official ballots. Provided that the board of elections having jurisdiction over the printing and distribution of the ballots concerned may cause said ballots to be reprinted and be substituted in all respects for the first printed ballots if, in its judgment, such substitution is feasible and advisable. (1929, c. 164, s. 7; 1931, c. 254, s. 1; 1947, c. 505, s. 8.)

The 1947 amendment rewrote this section.

§ 163-155. Number of ballots; what ballots shall contain; arrangement.

(a) On the official presidential ballot, the names of candidates for electors of president and vice-president of the United States of any political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party shall not be placed on the ballot, but shall after nomination, be filed with the secretary of state. In place of their names, there shall be printed first on the ballot the names, of the candidates for president and vice-president of the United States respectively, of each such political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party and they shall be arranged under the title of the offices. The party columns shall be separated by black ink lines. At the head of each party column shall be printed the party name in large type and below this a circle one-half inch in diameter, below this the names of the candidates for president and vice-president in the order prescribed. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle."

(e) On the official ballot on constitutional amendments or other propositions submitted shall be printed each amendment or proposition submitted in the form laid down by the legislature, county commission, convention, or other body submitting such amendment or proposition. Each amendment or proposition shall be printed in a separate section and the section shall be numbered consecutively, if there be more than one. The form of the constitutional amendment or referendum ballot shall be prepared by the state board of elections and approved by the attorney general of North Carolina.

(1947, c. 505, s. 9; 1949, c. 672, s. 2.)

Editor's Note.—The 1947 amendment rewrote the latter part of subsection (e), and the 1949 amendment inserted in the first paragraph of subsection (a) the clause as to having qualified as a political party under § 163-1. As the rest of the section was not affected by the amendments only subsection (e) and the first paragraph of subsection (a) are set out.

§ 163-157. Number of ballots to be furnished polling places.—There shall be provided for each voting place at which an election or primary is to be held such a number of ballots that there shall be at least one hundred and five ballots for every one hundred registered voters at each polling place, or an excess of ballots of five per cent over the registration at each precinct. (1929, c. 164, s. 11; 1933, c. 165, s. 22; 1951, c. 849, ss. 1, 2.)

Editor's Note.—The 1951 amendment changed this section so as to require five per cent instead of twenty-five per cent of excess ballots over the total registration.

§ 163-175. Method of marking ballots; improperly marked ballots not counted; when.

2. If the elector desires to vote a mixed ticket, or in other words for candidates of different parties, he shall, either,

(a) Omit making a cross mark in the party circle above the name of any party and make a cross mark in the voting square opposite the name of each candidate for whom he desires to vote on whatever ticket he may be; or

(b) Make a cross mark in the party circle above the name of the party for some of whose candidates he desires to vote, and then make a cross mark in the voting square opposite the name of any candidates of any other party, for whom he may desire to vote, in which case, the cross mark in the party circle above the name of a party will cast the elector's vote for every candidate on the ticket of such party, except for those candidates whose names are opposite the specially marked opposing candidates and the cross mark before the names of such opposing candidates will cast the elector's vote for them; provided that where there are group candidates for similar offices the elector may select and specially mark all of such candidates for whom he wishes to vote.

3. If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in with a pencil or ink in the proper place, and making a cross (x) mark in the blank space at the left of the name so written in. When a name is written in on the official ballot, the new name so written in is to be treated like any other name on the ballot. No sticker is to be used. Any name written in on an official ballot by any election official, or by any person other than the voter or a person rendering assistance to a voter pursuant to §§ 163-172, 163-173 or 163-174, shall be invalid, and the name or names so written in shall not be counted.

(1947, c. 505, s. 10.)

Editor's Note.—

The 1947 amendment rewrote the latter part of paragraph (b) of subsection 2, and added the last sentence of subsection 3. As the rest of the section was not changed only these subsections are set out.

§ 163-183. Supervision over primaries and elections; regulations.

State Board of Elections May Make Regulations Not in Conflict with Law.—The general assembly has conferred upon the state board of elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. It seems clear that this specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it. This is true because the constitution forbids the legislature to delegate the power to make law to any other body. *States' Rights Democratic Party v. State Board of Elections*, 229 N. C. 179, 49 S. E. (2d) 379.

§ 163-187.1. Automatic voting machines.—Any county or city of the state may, at the expense of such county or city, adopt and purchase, upon an installment basis or otherwise, or lease, with or without option to purchase, voting machines for use at all primaries and elections held within such county or city, or within any one or more precincts thereof, in such manner and upon such terms as are deemed to be in the best interest of such county or city. The use of any voting machines approved by the state board of elections in any primary or election held in any county or city shall be as valid as the use of paper ballots by the voters. (1949, c. 301.)

Art. 21. Corrupt Practices Act of 1931.

§ 163-196. Certain acts declared misdemeanor.

(8) For any candidate or any chairman or treasurer of a campaign committee to fail to make under oath the report or reports required of him or it by §§ 163-193 to 163-195, or for any cam-

paign committee to fail to furnish to a candidate a duplicate copy of the report to be made by it or its chairman or treasurer.

It shall be the duty of the Secretary of State, after the time has expired for the filing of said statement of campaign contributions and expenditures with the Secretary of State by candidates in a primary election, as is provided in § 163-193 of the General Statutes of North Carolina, to immediately thereafter report to the attorney General of North Carolina the names and addresses of all candidates for federal, State, or district offices who have failed to file such statement in compliance with the provisions of §§ 163-193 and 163-194 of the General Statutes of North Carolina. Upon the receipt of said report from the Secretary of State, it shall be the duty of the Attorney General of North Carolina to notify the proper prosecuting officer who shall prosecute any person violating the provisions of this article;

(9) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;

(10) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;

(11) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(12) For any chairman of a county board of elections or other returning officer to fail or neglect, wilfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;

(13) For any register of deeds or clerk of the Superior Court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement in a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(14) For any corporation doing business in this State, either under domestic or foreign charter, directly or indirectly, to make any contribution or expenditure in aid or in behalf of any candidate or campaign committee in any primary or election held in this State, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used, or for any contribution or expenditure so made; or for any officer, director, stockholder, attorney or agent of any corporation to aid, abet, advise or consent to any such contribution or expenditure, or for any person to solicit or knowingly receive any such contribution or expenditure.

Any officer, director, stockholder, attorney or agent of any corporation aiding or abetting in any contribution or expenditure made in violation

of this sub-section shall, in addition to being guilty of a misdemeanor as hereinbefore set out, be liable to such corporation for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder thereof;

(15) For any person wilfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires. (1931, c. 348, s. 9; 1951, c. 983, s. 1.)

Editor's Note.—The 1951 amendment added the second paragraph to subsection (8), deleted former subsection (9) and renumbered the following subsections accordingly. As the first paragraph and subsections (1) to (7) were not affected by the amendment, they are not set out.

Applied in *State v. Pritchard*, 227 N. C. 168, 41 S. E. (2d) 287 (paragraph 11).

Art. 22. Other Offenses against the Elective Franchise.

§ 163-207. Convicted officials; removal from office.—Any public official who shall be convicted of any violation of any of the provisions of article 21 or article 22 of this chapter, in addition to the punishment provided by law for such violation, may be removed from office by the judge presiding at the trial and shall be ineligible to hold any other public office until his citizenship is restored as provided by law in case of conviction of a felony, and for a period of two years in case of conviction of a misdemeanor. (1949, c. 504.)

Chapter 164. Concerning the General Statutes of North Carolina.

Sec. Art. 1. The General Statutes.

164-10. Supplements to the General Statutes; rearrangement of laws and correction of errors.

164-11. Supplements prima facie statement of laws; method of citation.

164-11.1. 1945, 1947, 1949 and 1951 Cumulative Supplements prima facie evidence of laws.

164-11.2. Adoption of Volumes 2A, 2B and 2C of the General Statutes.

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164-12. Creation; name.

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164-17. Committees; rules.

164-18. Reports.

164-19. Compensation.

Art. 1. The General Statutes.

§ 164-1. Title of revision.

Editor's Note.—Acts 1945, c. 157 inserted the heading of this article.

§ 164-8. General Statutes of North Carolina effective December 31, 1943.

Quoted in *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322.

§ 164-10. Supplements to the General Statutes; rearrangement of laws, and correction of errors.—The division of legislative drafting and codification of statutes of the department of justice, under the direction and supervision of the attorney general, shall have the following duties and powers with regard to the supplements to the General Statutes:

(a) Within six months after the adjournment of each general assembly, or as soon thereafter as possible, the division shall cause to be published under its supervision, cumulative pocket supplements to the four volumes of the General Statutes, and any replacement or recompiled volumes thereof, which shall contain an accurate transcription of all laws of a general and permanent nature enacted by the general assembly,

the material contained in the next preceding pocket and interim supplements, complete and accurate annotations to the statutes, appendix and other material accumulated since the publication of the next preceding pocket and interim supplements, and a cumulative index of said material.

(b) Periodically, every six months after the publication and issuance of a cumulative pocket supplement following a session of the general assembly, or as soon thereafter as possible, except when the publication of the cumulative pocket supplement makes it unnecessary, the division shall cause to be published an interim supplement containing all pertinent annotations and other material found by the division to be necessary and proper, accumulating since the publication of the said cumulative pocket supplement or the last interim supplement.

(c) In the preparation of the general and permanent laws enacted by the general assembly for inclusion in the cumulative pocket supplements, the division is hereby authorized:

(1) To rearrange the order of chapters, subchapters, articles, sections and other divisions or subdivisions;

(2) To provide titles for any such divisions or subdivisions and section titles or catchlines when they are not provided by such laws;

(3) To adopt a uniform system of lettering or numbering sections and the various subdivisions thereof and to reletter or renumber sections and section subdivisions in accordance with such uniform system;

(4) To rearrange definitions in alphabetical order;

(5) To rearrange lists of counties in alphabetical order; and

(6) To make such other changes in arrangement and form that do not change the law as may be found by the division necessary for an accurate, clear and orderly codification of such general and permanent laws. (1945, c. 863; 1947, c. 150; 1951, c. 149, s. 1.)

Editor's Note.—The 1947 amendment rewrote subsection (c). The 1951 amendment inserted the words "and any replacement or recompiled volumes thereof," in the sixth line of paragraph (a).

For a brief comment on the 1947 amendment, see 25 N. C. Law Rev. 460.

§ 164-11. Supplements prima facie statement of laws; method of citation.—(a) The supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes, when printed under the supervision of the division of legislative drafting and codification of statutes of the department of justice, shall establish prima facie the general and permanent laws of North Carolina contained in said supplements.

(b) The cumulative pocket supplement may be cited as "G. S., Supp. 19...." and the interim supplement may be cited as ".... G. S. In. Supp. 19....," the blank in front of "G. S." to be filled in with the number of the interim supplement for that year. (1945, c. 863.)

Cross Reference.—For subsequent law, see § 164-11.1.

Editor's Note.—The 1951 amendment inserted the words "or to any replacement or recompiled volumes of the General Statutes" in the second line of subsection (a).

§ 164-11.1. 1945, 1947, 1949 and 1951 Cumulative Supplements prima facie evidence of laws.—The 1945 and the 1947 and the 1949 and 1951 Cumulative Supplements to the General Statutes of North Carolina of 1943, as compiled and published by the Michie Company, under the supervision of the department of justice of the state of North Carolina, are hereby constituted and declared to be prima facie evidence of the laws of North Carolina contained in said supplements. (1949, c. 45; 1951, c. 1149, s. 3.)

Editor's Note.—The 1951 amendment inserted the words and figures "and the 1949 and 1951" appearing in the second line.

For a brief comment on this section, see 27 N. C. Law Rev. 478.

See § 164-11.

§ 164-11.2. Adoption of Volumes 2A, and 2B and 2C of the General Statutes.—The chapters, subchapters, articles and sections, now comprising Volume 2 of the General Statutes of North Carolina and the Cumulative Supplements thereto, consisting of §§ 26-1 through 105-462 now in force as amended, are hereby re-enacted and designated Volumes 2A, 2B and 2C, respectively, of the General Statutes of North Carolina. Provided, that this enactment of Volumes 2A, 2B and 2C shall not include any appended annotations, editorial notes, comments, cross references, legislative or historical references, or other material collateral or supplemental to the said chapters, sub-chapters, articles and sections, but not contained in the body thereof. (1951, c. 900.)

Art. 2. The General Statutes Commission.

§ 164-12. Creation; name.—There is hereby created and established a commission to be known as "The General Statutes Commission." (1945, c. 157.)

§ 164-13. Duties.—It shall be the duty of the commission—

(a) To advise and cooperate with the division of legislative drafting and codification of statutes of the department of justice in the work of continuous statute research and correction for which the division is made responsible by § 114-9 (c).

(b) To advise and cooperate with the division of legislative drafting and codification of statutes in the preparation and issuance by the division of supplements to the General Statutes pursuant to § 114-9 (b).

(c) To make a continuing study of all matters involved in the preparation and publication of modern codes of law.

(d) To recommend to the General Assembly the enactment of such substantive changes in the law as the commission may deem advisable.

(e) To budget and expend any funds made available for utilizing the services of persons specially qualified to assist in the work of the commission and necessary clerical assistance, to which end funds may be allotted to the commission from the contingency and emergency fund. (1945, c. 157; 1951, c. 761.)

Cross Reference.—As to subsequent statute relating to duties of revisor of statutes in regard to § 114-9(c), see § 114-9.1.

Editor's Note.—The 1951 amendment added subsections (d) and (e).

§ 164-14. Membership; appointments; terms; vacancies.—(a) The commission shall consist of nine members, who shall be appointed as follows: (1) one member, by the president of the North Carolina state bar; (2) one member, by the president of the North Carolina bar association; (3) one member, by the dean of the school of law of the University of North Carolina; (4) one member, by the dean of the school of law of Duke University; (5) one member, by the dean of the school of law of Wake Forest College; (6) one member, by the speaker of the house of representatives of each general assembly from the membership of the house; (7) one member, by the president of the senate of each general assembly from the membership of the senate; (8) two members, by the governor.

(b) Appointments of original members of the commission made by the president of the North Carolina state bar, the president of the North Carolina bar association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest College shall be for one year. Appointments of original members of the commission made by the speaker of the house of representatives, the president of the senate, and the governor shall be for two years.

(c) After the appointment of the original members of the commission, appointments by the president of the North Carolina state bar, the president of the North Carolina bar association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest College shall be made in the even numbered years, and appointments made by the speaker of the house of representatives, the president of the senate, and the governor shall be made in the odd numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May thirty-first two years thereafter. All such appointments shall be made not later than May thirty-first of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the governor. If any member of the commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed.

ed by the person who made the original appointment, as provided in § 164-14, or by the successor of such person; and if such vacancy is not filled within thirty days after the vacancy occurs, it shall then be filled by appointment by the governor.

(e) All appointments shall be reported to the secretary of the commission. (1945, cc. 157, 635; 1947, c. 114, s. 3.)

The 1947 amendment struck out the words "with the approval of the council thereof" formerly appearing after the word "bar" in line four of subsection (a).

For comment on the 1947 amendment, see 25 N. C. Law Rev. 459.

§ 164-15. Meetings; quorum.—The commission shall hold not less than two regular meetings each year, of which one shall be held in June and one in November, at such times during those months as may be fixed therefor by the commission itself. The commission may hold such other regular meetings as it may provide for by its rules. Special meetings may be called by the chairman, or by any two members of the commission, upon such notice and in such manner as may be fixed therefor by the rules of the commission. The regular June and November meetings of the commission shall be held in Raleigh, but the commission may provide for the holding of other meetings from time to time at any other place or places in the state. The first meeting of the commission shall be held in June one thousand nine hundred and forty-five upon the call of the attorney general at such time and upon such notice as he may designate. A majority of the members of the board shall constitute a quorum. (1945, c. 157.)

§ 164-16. Officers.—At its regular June meeting in the odd numbered years the commission shall elect a chairman and a vice chairman for a term of two years and until their successors are elected and assume the duties of their positions. The revisor of statutes shall be ex-officio secretary of the commission. (1945, c. 157; 1947, c. 114, s. 2.)

Editor's Note.—The 1947 amendment substituted "revisor of statutes" for "director of the division of legislative drafting and codification of statutes" in the last sentence. For comment on the 1947 amendment, see 25 N. C. Law Rev. 459.

§ 164-17. Committees; rules.—The commission may elect, or may authorize its chairman to appoint, such committees of the commission as it may deem proper. The commission may adopt such rules not inconsistent with this article as it may deem proper with respect to any and all matters relating to the discharge of its duties under this article. (1945, c. 157.)

§ 164-18. Reports.—The commission shall submit to each regular session of the general assembly a report of its work during the preceding two years, together with such recommendations as it may deem proper. (1945, c. 157.)

§ 164-19. Compensation.—Members of the commission shall be paid ten dollars a day for attendance upon meetings of the commission, or upon attendance of meetings of committees of the commission, together with such subsistence and travel allowance as may be provided by law. (1945, c. 157.)

Chapter 165. Veterans.

Art. 1. North Carolina Veterans Commission.

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Art. 1. North Carolina Veterans Commission.

§ 165-1. **Short title.**—This article may be cited as "The North Carolina Veterans Commission Act." (1945, c. 723, s. 1.)

§ 165-2. **Definition of terms.**—Wherever used in this article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

(a) "Commission" means the North Carolina veterans commission.

(b) "Director" means the director of the North Carolina veterans commission.

(c) "Veteran" means any person who has served at any time in the armed forces of the United States during any war in which the United States was a belligerent, or any person who is entitled to any benefits or rights under the laws of the United States, particularly the servicemen's readjustment act of one thousand nine hundred and forty-four, or any rules, regulations or directives issued pursuant thereto, by reason of service in the armed forces of the United States during any war in which the United States has engaged.

(d) "Veterans organization" means a nationally recognized veterans organization whose membership is composed of veterans as defined in this section and which has been chartered by an act of the United States Congress. (1945, c. 723, s. 1; 1949, c. 430, s. 1.)

Editor's Note.—The 1949 amendment added subsection (d).

§ 165-3. **Purpose of article.**—The purpose of this article is to create a commission whose functions, purpose and duty it shall be to coordinate, harmonize, and perform the services now being rendered veterans by various state departments, agencies, and instrumentalities to the end that such state services may be more effectively and economically administered; and that such coordinated state services may give to all veterans, through this commission, a definite and practical means of availing themselves of all such rights and benefits as they may be entitled to as veterans, without unnecessary inconvenience or delay. In no sense is this commission intended to supersede or duplicate the work of federal, private, or civic agencies rendering service to veterans, it being the function of this commission to furnish a means of contact and coordination between veterans and all governmental, private, or civic service facilities in order to make more fully and readily available to all veterans, all rights and benefits to which they may be entitled. (1945, c. 723, s. 1.)

§ 165-4. **Creation; name.**—There is hereby cre-

ated a commission to be known as the North Carolina veterans commission. (1945, c. 723, s. 1.)

§ 165-5. **Membership; vacancies; chairman; meetings; compensation.**—(1) The membership of the commission shall consist of five persons appointed by the governor, who shall be veterans as defined in § 165-2 of this article. Both major political parties in the state shall be represented on the commission. The department commander or official head of each recognized veterans organization in this state shall be an ex officio member of the commission but shall have no vote as a member of said commission.

(2) For the initial term of the members of the commission, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years; thereafter the successors of each shall be appointed for terms of five years and until their successors are appointed and qualify.

(3) Vacancies in the commission shall be filled by the governor for the unexpired term.

(4) The commission shall select one of its members to act as chairman.

(5) The commission shall meet quarterly in January, April, June, and October, and at such other times as may be fixed by the chairman. The commission may be convoked at such other times as the governor or chairman may deem necessary.

(6) Members and ex officio members of the commission shall receive a per diem of seven dollars (\$7.00) while attending meetings of the commission and, in addition thereto, shall be allowed reasonable travel and subsistence expenses in accordance with the applicable schedules and procedure of the budget bureau. (1945, c. 723, s. 1; c. 1087; 1949, c. 430, s. 2; 1951, c. 1048, ss. 1, 2.)

Editor's Note.—The 1949 amendment added the last sentence of subsection (1).

The 1951 amendment deleted the words "nor receive compensation per diem or other expenses for services rendered" formerly appearing at the end of subsection (1), and inserted the words "and ex-officio members" in the first line of subsection (6).

§ 165-6. **Powers and duties of the commission; limitation.**—(a) The commission shall have the following powers and duties:

(1) To acquaint itself, the director, and such other assistants and employees as may be employed for carrying out the purposes of this article, with the laws, rules, and regulations, federal, state, and local, enacted for the benefit of veterans, their families, and dependents.

(2) To collect data and information as to the facilities and services available to veterans, their families, and dependents and to cooperate with agencies furnishing information or services throughout the state in order to inform such agencies regarding the availability of (a) education, training and retraining facilities, (b) health, medical, rehabilitation, and housing services and facilities, (c) employment and reemployment services, (d) provisions of federal, state, and local laws, rules, and regulations affording rights, privileges, and benefits to veterans, their families, and dependents, and in respect to such other matters of similar, related, or appropriate nature not herein set out.

(3) To assist veterans, their families, and de-

pendents in the presentation, processing, proof, and establishment of such claims, privileges, rights, and benefits as they may be entitled to under federal, state, or local laws, rules, and regulations.

(4) To cooperate with the national, state, and local governmental, private, and civic agencies and instrumentalities securing services or any benefits to veterans, their families, and dependents.

(5) To accept any property, funds, service, or facilities from any source, public or private, granted in aid or furtherance of the administration of the provisions of this article: Provided, that no financial obligation shall be thereby incurred without the authorization and approval of the director of the budget.

(6) Subject to the approval of the director of the budget to establish in any county, city, or town of the state such branch or district offices as the commission may find necessary for the proper administration of this article.

(7) Subject to the approval of the director of the budget, to enter into any contract or agreement with any person, firm, or corporation, or governmental agency or instrumentality in furtherance of the purposes of this article, and to make all rules and regulations necessary for the proper and effective administration of its duties.

(b) Any county, city, or town may employ one or more persons to serve in such county, city, or town, under the supervision of the commission and to perform such duties as the commission may direct in carrying out the provisions and purposes of this article; and such county, city, or town is hereby authorized to pay the salaries of such persons so employed, together with such other expense for quarters, equipment, supplies, and incidentals as may be necessary to give proper effect to this article: Provided, that the commission is hereby authorized and empowered in its discretion to contribute to the salaries and expenses of such persons as are employed by counties, cities, or towns, in order to provide for joint maintenance of the service rendered by them.

(c) There is hereby appropriated to the North Carolina veterans commission out of the general fund of the state the sum of fifty thousand dollars for the fiscal year beginning July 1, 1949, and ending June 30, 1950, and a like sum for the fiscal year beginning July 1, 1951, to be expended as set out below.

There may be paid by North Carolina veterans commission, in its discretion, to any county of the state, in quarterly installments, for each fiscal year of the next biennium a sum equal to such amount as the board of county commissioners of such county appropriates for the employment during such fiscal year of a county veterans service officer, not exceeding one thousand dollars (\$1000) to any one county, such money to be expended by the recipient county in supplementing its own appropriation for payment of the salary and other necessary expenses of a county veterans service officer.

The board of county commissioners of each county of the state is hereby authorized to appropriate such amount as it may deem necessary to pay the salary of a county veterans service officer, and to secure supplementary funds from

the state, and the payment of such salary is hereby declared to be for a public purpose. (1945, c. 723, s. 1; 1949, c. 1292.)

Editor's Note.—The 1949 amendment added subsection (c).

§ 165-7. Director and employees.—The commission shall elect, with the approval of the governor, a director who shall be a veteran of competency and ability. He shall serve for such time as his services are satisfactory to the commission at a salary to be fixed by the commission and approved by the director of the budget.

The director may, with the approval of the commission, employ such assistants as may be necessary effectively to administer the provisions of this article and with the approval of the commission may establish at such veterans administration facilities as are now or may hereafter be established, necessary personnel for the processing and presentation of all claims and benefits under federal or state laws, rules, and regulations; and to fix the salaries of such personnel subject to the approval of the director of the budget. In employing such persons, preference shall be given to veterans. (1945, c. 723, s. 1.)

§ 165-8. Biennial report.—The commission shall biennially prepare and submit to the governor and the general assembly a report of its activities during the preceding two years. (1945, c. 723, s. 1.)

§ 165-9. Quarters.—The board of public buildings and grounds shall provide in the city of Raleigh, adequate quarters for the central office of the commission. The division of purchase and contract shall arrange for leasing or shall otherwise provide such necessary quarters as the commission may require for the transaction of its business in other sections of the state. (1945, c. 723, s. 1.)

§ 165-10. Appropriation.—The governor, with the approval of the council of state, is hereby authorized and empowered to allocate from time to time from the contingency and emergency fund, such funds as may be necessary to carry out the intent and purposes of this article. (1945, c. 723, s. 1.)

§ 165-11. Transfer of veterans activities.—As promptly as he may deem practicable after the appointment of the commission, the governor shall transfer to the commission such facilities, properties, and activities now being held or administered by the state for the benefit of veterans, their families, and dependents as he may deem proper.

(a) The governor may transfer to the commission all such funds or appropriations now available for any veterans service, including appropriations and allocations for the impending biennium.

(b) The provisions of subsection (a) of this section shall not apply to the war veterans loan administration, this agency being in the process of liquidation.

(c) The provisions of subsection (a) of this section shall not apply to the activities of the North Carolina unemployment compensation commission in respect to veterans. (1945, c. 723, s. 1.)

Art. 2. Minor Veterans.

§ 165-12. Short title.—This article may be cited

as "The Minor Veterans Enabling Act." (1945, c. 770.)

For discussion of this article, see 23 N. C. Law Rev. 359.

§ 165-13. Definition.—In this article, unless the context or subject matter otherwise requires, the term, "servicemen's readjustment act" means the servicemen's readjustment act of one thousand nine hundred and forty-four as enacted by the congress of the United States (58 Statutes at Large 284, 38 U. S. Code 693 and following), together with any amendments thereof or related legislation supplemental or in addition thereto, and any rules, regulations, or directives issued pursuant thereto. (1945, c. 770.)

§ 165-14. Application of article.—This article applies to every person, either male or female, eighteen years of age or over, but under twenty-one years of age, who is, or who may become, entitled to any rights or benefits under the servicemen's readjustment act. (1945, c. 770.)

§ 165-15. Purpose of article.—The purpose of this article is to remove the disqualification of age which would otherwise prevent persons to whom this article applies from taking advantage of any right or benefit to which they may be or may become entitled under the servicemen's readjustment act, and to assure those dealing with such minor persons that the acts of such minors shall not be invalid or voidable by reason of the age of such minors, but shall in all respects be as fully binding as if said minors had attained their majority; and this article shall be liberally construed to accomplish that purpose. (1945, c. 770.)

§ 165-16. Rights conferred; limitation.—(a) Every person to whom this article applies is hereby authorized and empowered, in his or her own name without order of court or the intervention of any guardian or trustee—

(1) To purchase or lease any property, either real or personal, or both, which such person may deem it desirable to purchase or lease in order to avail himself or herself of any of the benefits of the servicemen's readjustment act, and to take title to such property in his or her own name or in the name of himself or herself and spouse.

(2) To execute any note or similar instrument for any part or all of the purchase price of any property purchased pursuant to paragraph (1) of this section and to secure the payment thereof by retained title contract, mortgage, deed of trust or other similar or appropriate instrument.

(3) To execute any other contract or instrument which such person may deem necessary in order to enable such person to secure the benefits of the servicemen's readjustment act.

(4) To execute any contract or instrument which such person may deem necessary or proper in order to enable such person to make full use of any property purchased pursuant to the provisions of the servicemen's readjustment act, including the right to dispose of such property, such contracts to include but not to be limited to the following:

(A) With respect to a home: Contracts for insurance, repairs, and services such as gas, water, and lights, and contracts for furniture and other equipment.

(B) With respect to a farm: Contracts such as

are included in paragraph (A) of this subparagraph (4) above, together with contracts for live stock, seeds, fertilizer and farm equipment and machinery, and contracts for farm labor and other farm services.

(C) With respect to a business: Contracts such as are included in paragraph (A) of this subparagraph (4), together with such other contracts as such person may deem necessary or proper for the maintenance and operation of such business.

(b) Every person to whom this article applies may execute such contracts as are hereby authorized in his own name without any order from any court, and without the intervention of a guardian or trustee, and no note, mortgage, conveyance, deed of trust, contract, or other instrument, conveyance or action within the purview of this article shall be invalid, voidable or defective by reason of the fact that the person executing or performing the same was at the time a minor.

(c) In respect to any action at law or special proceeding in relation to any transaction within the purview of this article, every minor person to whom this article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee, and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of twenty-one years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this article, nor disavow any such transaction upon coming of age.

(d) All such authority and power as are conferred by this article are subject to all applicable provisions of the servicemen's readjustment act. (1945, c. 770.)

Art. 3. Minor Spouses of Veterans.

§ 165-17. Definition.—For the purposes of this article, the term "veteran" means any person who is entitled to any benefits or rights under the laws of the United States or any rules, regulations or directives issued pursuant thereto by reason of service in the armed forces of the United States during any war in which the United States has engaged. (1945, c. 771.)

§ 165-18. Rights conferred.—(a) Any person under the age of twenty-one years who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to execute any and all contracts, conveyances, and instruments, to take title to property, to defend any action at law, and to do all other acts necessary to make fully available to such veteran, his or her family or dependents, all rights and benefits under the servicemen's readjustment act of one thousand nine hundred and forty-four, or other statutes enacted in the interest of veterans, their families or dependents, and all laws, rules and regulations amendatory or supplemental thereto, in as full and ample manner as if such minor husband or wife of such veteran had attained the age of twenty-one years.

(b) Any person under the age of 21 years, who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name

and without any order of court or the intervention of a guardian or trustee, to join in the execution of any contract, deed, conveyance or other instrument which may be deemed necessary to enable his or her veteran spouse to make full use of any property purchased pursuant to the provisions of the foregoing section, including the right to dispose of such property.

(c) With respect to any action at law or special proceeding in relation to any transaction within the purview of this article, every minor person to whom this article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee; and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of twenty-one years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this article, nor disavow any such transaction upon coming of age. (1945, c. 771; 1947, c. 905, ss. 1, 2.)

Editor's Note.—The 1947 amendment inserted present subsection (b) and designated former subsection (b) as (c).

Art. 4. Copies of Records Concerning Veterans.

§ 165-19. **Definitions.**—For the purpose of this article the term veteran shall be given the meaning set forth in § 165-2. (1945, c. 1064.)

§ 165-20. **Copies to be furnished by bureau of vital statistics.**—Upon application to the bureau of vital statistics by a representative of the North Carolina veterans commission, it shall be the duty of the bureau of vital statistics to furnish forthwith to such applicant without charge or fee certified copies of all such vital statistical records or other records, including but not limited to birth certificates and death certificates, concerning any veteran which, in the judgment of such representative of the North Carolina veterans commission may be necessary or desirable in order to secure for such veteran, his or her family or dependents, any right or benefit under any federal, state, or local law, rule or regulation relating to veterans: Provided, that the provisions of this section shall be subject to those provisions of chapter forty-eight of the General Statutes which relate to the records in adoption proceedings. (1945, c. 1064.)

As to furnishing statistical records to officers of veterans' organizations, see § 130-103.

§ 165-21. **Copies to be furnished by registers of deeds.**—Upon application to the register of deeds of any county by a representative of the North Carolina veterans commission, it shall be the duty of such register of deeds to furnish forthwith to such applicant, without charge or fee, certified copies of any such marriage certificate or any other such official record or document concerning any veteran as in the judgment of such representative of the North Carolina veterans commission may be necessary or desirable in order to secure for such veteran, his or her family or dependents any right or benefit under any federal, state or local law, rule or regulation relating to veterans. (1945, c. 1064.)

§ 165-22. **Officials relieved of liability for fees.**—No official chargeable with the collection of any

fee or charge under the laws of the state of North Carolina in connection with his official duties shall be held accountable on his official bond or otherwise for any fee or charge remitted pursuant to the provisions of this article. (1945, c. 1064.)

Article 5. Veterans' Recreation Authorities.

§ 165-23. **Short title.**—This article may be referred to as the "Veterans' Recreation Authorities Law." (1945, c. 460, s. 1.)

This article is valid, as it is for a public purpose and in the public interest. *Brumley v. Baxter*, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930.

Article Does Not Authorize City to Make Absolute Grant.—The act under which the veterans' recreational center was created does not authorize city to make an absolute grant of its property upon such terms that in the event the grantee determines the public purpose has failed, or the recreational facilities placed thereon for veterans are not being sufficiently used, the grantee may dispose of the property in its discretion and apply the proceeds to such charity as it may elect. *Brumley v. Baxter*, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930.

§ 165-24. Finding and declaration of necessity.

—It is hereby declared that conditions resulting from the concentration in various cities and towns of the state having a population of more than one hundred thousand inhabitants of persons serving in the armed forces in connection with the present war, or who after having served in the armed services during the present war, or previously have been honorably discharged, require the construction, maintenance and operation of adequate recreation facilities for the use of such persons; that it is in the public interest that adequate recreation facilities be provided in such concentrated centers; and the necessity, in the public interest, for the provisions hereinafter enacted is hereby declared as a matter of legislative determination. (1945, c. 460, s. 2.)

§ 165-25. **Definitions.**—The following terms, wherever used or referred to in this article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "Recreation Authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than one hundred thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(6) "State" shall mean the state of North Carolina.

(7) "Government" shall include the state and

federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of any of them.

(8) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(9) "Veterans' recreation project" shall include all real and personal property, buildings and improvements, offices and facilities acquired or constructed, or to be acquired or constructed, pursuant to a single plan or undertaking to provide recreation facilities for veterans in concentrated centers of population. The term "veterans' recreation project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements, and all other work in connection therewith.

(10) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(11) "Veteran" shall include every person who has enlisted or who has been inducted, warranted or commissioned, and who served honorably in active duty in the military or naval service of the United States at any time, and who is honorably separated or discharged from such service, or who, at the time of making use of the facilities, is still in active service, or has been retired, or who has been furloughed to a reserve. This definition shall be liberally construed, with a view completely to effectuate the purpose and intent of this article. (1945, c. 460, s. 3.)

§ 165-26. Creation of authority.—If the council of any city in the state having a population of more than one hundred thousand, according to the last federal census, shall, upon such investigation as it deems necessary, determine:

(1) That there is a lack of adequate veterans' recreation facilities and accommodations from the operations of public or private enterprises in the city and surrounding area; and/or

(2) That the public interest requires the construction, maintenance or operation of a veterans' recreation project for the veterans thereof, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding), and shall cause notice of such determination to be given to the mayor, who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of state an application signed by them, which shall set forth (without any detail other than the mere recital): (1) that the council has made the aforesaid determination after such investigation, and that the mayor has appointed them as commissioners; (2) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to

office, the date and place of induction into and taking oath of office, and that they desire the recreation authority to become a public body and a body corporate and politic under this article; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location and the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of the said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the state, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1945, c. 460, s. 4.)

§ 165-27. Appointment, qualifications and tenure of commissioners.—An authority shall consist of five commissioners appointed by the mayor, and he shall designate the first chairman.

Of the commissioners who are first appointed, two shall serve for a term of one year, two for a term of three years, and one for a term of five years, and thereafter, the terms of office for all commissioners shall be five years. A commissioner

shall hold office until his successor has been appointed and qualified. Vacancies shall be filled for the unexpired term. Vacancies occurring by expiration of office or otherwise shall be filled in the following manner: The mayor and the remaining commissioners shall have a joint session and shall unanimously select the person to fill the vacancy; but if they are unable to do so, then such fact shall be certified to the resident judge of the superior court of the county in which the authority is located, and he shall fill the vacancy. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1945, c. 460, s. 5.)

§ 165-28. Duty of the authority and commissioners of the authority.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the state, and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

The commissioners shall provide separate recreational centers for persons of the colored and white races, and they may, in the exercise of their discretion, limit the use of recreational centers under their control in whole or in part to veterans of one sex. They shall have the authority to make rules and regulations regarding the use of the recreational centers and other matters and things coming within their jurisdiction.

They shall have the authority to appoint one or more advisory committees consisting of representatives of various veterans' organizations and others and may delegate to such committee or committees authority to execute the policies and programs of activity adopted by the commissioners. (1945, c. 460, s. 6.)

§ 165-29. Interested commissioners or employees.—No commissioner or employee of any authority shall acquire any interest, direct or indirect, in any veterans' recreation project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any such project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any

veteran's recreation project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office. (1945, c. 460, s. 7.)

§ 165-30. Removal of commissioners.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon such commissioner if mailed to him at his last known address as same appears upon the records of the authority.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioner removed, and the findings thereon. (1945, c. 460, s. 8.)

§ 165-31. Powers of authority.—An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To sue and be sued in any court; to make, use and alter a common seal; to purchase, acquire by devise or bequest, hold and convey real and personal property; to elect and appoint, in such manner as it determines to be proper, all necessary officers and agents, fix their compensation and define their duties and obligations; to make by-laws and regulations consistent with the laws of the state, for its own government and for the due and orderly conduct of its affairs and management of its property; without limiting the generality of the foregoing, to do any and every thing that may be useful and necessary in order to provide recreation for veterans. (1945, c. 460, s. 9.)

§ 165-32. Zoning and building laws.—All recreation projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the recreation project is situated. (1945, c. 460, s. 10.)

§ 165-33. Tax exemptions.—The authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof, or to any officer or employee of the state or any subdivision thereof. The property of an authority shall be exempt from all local, municipal and county taxes, and for the purpose of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. (1945, c. 460, s. 11.)

§ 165-34. Reports.—The authority shall, at least once a year, file with the mayor of the city an

audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1945, c. 460, s. 12.)

§ 165-35. Exemption from local government and county fiscal control acts.—The authority shall be exempt from the operation and provisions of chapter sixty of the public laws of North Carolina of one thousand nine hundred and thirty-one, known as the "local government act," and the amendments thereto, and from chapter one hundred and forty-six of the public laws of North Carolina of one thousand nine hundred and twenty-seven, known as the "county fiscal control act" and the amendments thereto. (1945, c. 460, s. 13.)

§ 165-36. Conveyance, lease or transfer of property by a city or county to an authority.—Any city or county, in order to provide for the construction, reconstruction, improvement, repair or management of any veterans' recreation project, or in order to accomplish any of the purposes of this article, may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority within the territorial boundaries of which such city or county it is wholly or partly located, any real, personal or mixed property, and in connection with any such transaction, the authority involved may accept such lease, transfer, assignment and conveyance, and bind itself to the performance and observation of any agreements and conditions attached thereto. Any city or county may purchase real property and convey or cause same to be conveyed to an authority. (1945, c. 460, s. 14.)

§ 165-37. Contracts, etc., with federal government.—In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any veterans' recreation project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of such a project, to take over, lease or manage any recreation project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases and other agreements which the federal government shall have the right to require. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any veterans' recreation project which the authority is empowered by this article to undertake. (1945, c. 460, s. 15.)

§ 165-38. Article controlling.—In so far as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling, provided that nothing in this article shall prevent any city or municipality from establishing, equipping and operating a veterans' recreation project, or extending recreation facilities under the provisions of its charter or

any general law other than this article. (1945, c. 460, s. 17.)

Art. 6. Powers of Attorney.

§ 165-39. Validity of acts of agent performed after death of principal.—No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (a) a member of the armed forces of the United States, or (b) a person serving as a merchant seaman outside the limits of the United States, included within the forty-eight states and the District of Columbia; or (c) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. (1945, c. 980, s. 1.)

§ 165-40. Affidavit of agent as to possessing no knowledge of death of principal.—An affidavit, executed by the attorney in fact or agent, setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable. (1945, c. 980, s. 2.)

§ 165-41. Report of "missing" not to constitute revocation.—No report or listing, either official or otherwise, of "missing" or "missing in action," as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. (1945, c. 980, s. 3.)

§ 165-42. Article not to affect provisions for revocation.—This article shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney. (1945, c. 980, s. 4.)

Art. 7. Miscellaneous Provisions.

As to guardians of children of service men, see § 33-67. As to veterans' guardianship act, see chapter 34. As to federal records and reports that person dead, missing, captured, etc., see §§ 8-37.1 to 8-37.3. As to conservators of estates of persons reported missing, captured or interned, see §§ 33-63 to 33-66. As to absentee voting by members of armed forces, see §§ 163-58, 163-70, 163-77.9. As to registration of official discharges from military and naval forces, see §§ 47-109, 47-110, 47-113, 47-114. As to

validation of instruments proved before officers of certain ranks, see § 47-2.1. As to salary increments for experience to teachers, etc., serving in armed forces, see § 115-359.1. As to exemption of veterans' pensions from taxation, see § 105-344. As to exemption of veterans from peddlers' license tax, see § 105-53. As to educational advantages for children of veterans, see §§ 116-145, 116-147, 116-148. As to furnishing statistical records to veterans' organizations, see § 130-103. As to exemption of property of veterans' organizations from taxation, see §§ 105-296, 105-297. As to exemption of veterans' organizations from tax on billiard and pool tables, see § 105-64. As to pensions for Confederate veterans, widows and servants, see § 112-18.

§ 165-43. **Protecting status of state employees in armed forces, etc.**—Any employee of the state of North Carolina, who has been granted a leave of absence for service in either (1) the armed forces of the United States; or (2) the merchant marine of the United States; or (3) outside the

Continental United States with the Red Cross, shall, upon return to state employment, if reemployed in the same position and if within the time limits set forth in the leave of absence, receive an annual salary of at least (1) the annual salary the employee was receiving at the time such leave was granted; plus (2) an amount obtained by multiplying the step increment applicable to the employee's classification as provided in the classification and salary plan for state employees by the number of years of such service, counting a fraction of a year as a year; provided that no such employee shall receive a salary in excess of the top of the salary range applicable to the classification to which such employee is assigned upon return. (1945, c. 220.)

Chapter 166. Civil Defense Agencies.

Sec.

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§ 166-1. **Short title.**—This chapter may be cited as "North Carolina Civil Defense Act of 1951." (1951, c. 1016, s. 1.)

§ 166-2. **Definitions.**—As used in this chapter: (a) "Civil defense" shall mean the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile action.

(b) "Local organization for civil defense" shall mean an organization created in accordance with the provisions of this chapter by State or local authority to perform local civil defense functions.

(c) "Mobile support unit" shall mean an organization for civil defense created in accordance with the provisions of this chapter by State or local authority to be dispatched by the Governor to supplement local organizations for civil defense in a stricken area.

(d) "Political subdivision" shall mean counties and incorporated cities and towns. (1951, c. 1016, s. 2.)

§ 166-3. **State Civil Defense Agency.**—The State Council of Civil Defense, hereinafter called the "Civil Defense Agency", created by North Carolina Emergency War Powers Proclamation

No. XVII, shall continue to function as the Civil Defense Agency of this State, which Council is composed, ex officio, of the following membership:

1. The Governor, as chairman.
2. Commissioner of Motor Vehicles, as executive vice-chairman.
3. Executive secretary of the State Board of Health.
4. The chancellor of the North Carolina State College of Agriculture and Engineering.
5. Director of the State Bureau of Investigation.
6. General counsel for the North Carolina League of Municipalities. (1951, c. 1016, s. 3.)

§ 166-4. **Director of Civil Defense and other personnel.**—(a) The Director of Civil Defense, hereinafter referred to as the "Director", shall be a full-time administrative officer, appointed by the State Council of Civil Defense, with the approval of the Governor, and his salary shall be fixed by said Council with the approval of the Governor but not to exceed eight thousand dollars (\$8,000) per annum.

(b) The Director, with the consent of the Council, may employ such technical, clerical, stenographic and other personnel and may make such expenditures within the appropriation therefor.

(c) The Director and other personnel of the Civil Defense Agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for personnel of other State agencies.

(d) The Director, subject to the direction and control of the Governor, shall be the administrative officer of the Civil Defense Agency and shall be responsible to the Civil Defense Agency and the Governor for carrying out the program for civil defense of this State. He shall coordinate the activities of all organizations for civil defense within the State, and shall maintain liaison with and cooperate with civil defense agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter as may be prescribed by the Governor. (1951, c. 1016, s. 3.)

§ 166-5. Civil defense powers of the Governor.

—(a) The Governor shall have general direction and control of the Civil Defense Agency, and shall be responsible for the carrying out of the provisions of this chapter, and in the event of disaster beyond local control, due to hostile action, may assume direct operational control over all or any part of the civil defense functions within this State.

(b) In performing his duties under this chapter and to effect its policy and purpose, the Governor is authorized and empowered:

(1) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government, which rules and regulations shall be available to the public generally at the office of the clerk of the superior court in each county and in each local civil defense office.

(2) To prepare a comprehensive plan and program for the civil defense of this State, such plan and program to be integrated into and coordinated with the civil defense plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparations of plans and programs for civil defense by the political subdivisions of this State, such plans to be integrated into and coordinated with the civil defense plan and program of this State to the fullest possible extent, within the provisions of this chapter.

(3) In accordance with such plan and program for the civil defense of this State, to ascertain the requirements of the State or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and, within the appropriation therefor, to plan for and procure supplies, medicines, materials, and equipment, and to institute training programs and public information programs, and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need.

(4) To delegate any administrative authority vested in him under this chapter, and to provide for the sub-delegation of any such authority.

(5) To cooperate and coordinate with the President and the heads of the armed forces, the civil defense agency of the United States, and other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the civil defense of the State and nation.

(6) By and with the consent of the Council of State to make appropriations from the contingency and emergency fund for the purpose of matching federal aid grants for the purposes outlined in this chapter. (1951, c. 1016, s. 3.)

§ 166-6. Additional powers of Governor in event of war or imminent danger of attack.—In performing his duties under this chapter, the Governor is further authorized and empowered in the event of a declaration of war by the Congress of the United States or when the Governor and Council of State acting together shall find

that there is imminent danger of hostile attack upon the State of North Carolina:

(1) To make such studies and surveys of the industries, resources, and facilities in this State as may be necessary to ascertain the capabilities of the State for civil defense, and to plan for the most efficient emergency use thereof.

(2) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules and regulations made pursuant thereto, which officers and agencies shall comply with such direction.

(3) To employ such measures and give such directions to the State or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter or with the findings or recommendations of such boards of health by reason of conditions arising from enemy attack or the threat of enemy attack or otherwise.

(4) On behalf of this State to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a state wide basis or local political subdivision basis or with a neighboring state or province of a foreign country. Such mutual aid arrangements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services, national or State guards while under the control of the State; health, medical and related services; fire fighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, fire fighting, and police units and health units; and on such terms and conditions as are deemed necessary. (1951, c. 1016, s. 4.)

§ 166-7. Mobile support units.—(a) The Governor or his duly designated representative is authorized to create and establish such number of mobile support units as may be necessary to reinforce civil defense organizations in stricken areas and with due consideration of the plans of the federal government and of other states. He shall appoint a commander for each such unit who shall have primary responsibility for the organization, administration and operation of such unit. Mobile support units shall be called to duty upon orders of the Governor and shall perform their functions in any part of the State, or, upon the conditions specified in this section, in other states.

(b) Whenever a mobile support unit of another state shall render aid in this State pursuant to the orders of the Governor of its home state and upon the request of the Governor of this State, this State shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of the personnel of such mobile support unit while rendering such aid, and for all

payments for death, disability or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid: Provided, that the laws of such other state contain provisions substantially similar to this section or that provisions to the foregoing effect are embodied in a reciprocal mutual-aid agreement or compact or that the federal government has authorized or agreed to make reimbursement for such mutual aid as above provided.

(c) No personnel of mobile support units of this State shall be ordered by the Governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section or unless the reciprocal mutual-aid agreements or compacts include provisions providing for such reimbursement or unless such reimbursement will be made by the federal government by law or agreement. (1951, c. 1016, s. 5.)

§ 166-8. Local organization for civil defense.—

(a) Each political subdivision of this State is hereby authorized to establish a local organization for civil defense in accordance with the State civil defense plan and program. Each local organization for civil defense shall have a Director who shall be appointed by the governing body of the political subdivision, who may be paid in the discretion of the governing body of the political subdivision, and who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such governing body. Civil defense directors appointed by the governing bodies of counties shall coordinate the activities of all civil defense organizations within such county, including the activities of civil defense organizations of cities and towns within such counties. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of § 166-10. Municipalities are hereby authorized to make appropriations for the purposes outlined in this section subject to the procedure and limitation established for appropriating municipal funds by the General Statutes.

(b) In carrying out the provisions of this chapter each political subdivision, in which any disaster due to hostile action as described in § 166-2(a) occurs, shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil defense purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster resulting from enemy attack, and to direct and coordinate the development of civil defense plans and programs in accordance with the policies and plans set by the federal and State civil defense agencies;

(2) To appoint, employ, remove, or provide,

with or without compensation, air-raid wardens, rescue teams, auxiliary fire and police personnel, and other civilian-defense workers;

(3) To establish a primary and one or more secondary control centers to serve as command posts during an emergency;

(4) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty, the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for civil-defense purposes and within or outside of the physical limits of the subdivision. (1951, c. 1016, s. 6.)

§ 166-9. Mutual aid agreements.—(a) The Director of each local organization for civil defense may, in collaboration with other public and private agencies within this State, develop or cause to be developed mutual aid arrangements for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements shall be consistent with the State civil defense plan and program, and in time of emergency it shall be the duty of each local organization for civil defense to render assistance in accordance with the provisions of such mutual aid arrangements.

(b) The director of each local organization for civil defense may, subject to the approval of the Governor, enter into mutual aid arrangements with civil defense agencies or organizations in other states for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. (1951, c. 1016, s. 7.)

§ 166-10. Appropriations and levy of taxes; authority to accept services, gifts, grants and loans.—

(a) The performance by political subdivisions of this State of any or all of the functions authorized by this chapter to be so performed is hereby declared to be for a public purpose, and the expenditure of funds therefor is for a necessary expense and the levy of taxes therefor is for a special purpose. Each political subdivision is hereby authorized, in accordance with the procedure and limitations established for the expenditure of public funds by local units of government by the General Statutes, for the purpose of performing such functions, in addition to all other taxes authorized by law, and each political subdivision may make appropriations and expend funds to perform any or all of such functions or to carry out the purposes of this chapter. In addition thereto, appropriations may be made by political subdivisions, for the purposes above described, immediately following the effective date of this chapter, such appropriations to be made from surplus funds or any other available funds not otherwise appropriated.

(b) Whenever the federal government or any agency or officer thereof shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for the purposes of civil defense, the State, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer and

upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) Whenever any person, firm or corporation shall offer to the State or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the State, acting through the Governor, or such political subdivision acting through its governing body, may accept such offer and upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer. (1951, c. 1016, s. 8.)

State Appropriation.—Section 13 of chapter 1016, Session Laws 1951, provides: "There is hereby appropriated for the purposes of this act the sum of thirty-nine thousand five hundred thirty-four dollars (\$39,534.00) for the fiscal year 1951-1952 and the sum of thirty-four thousand dollars (\$34,000.00) for the fiscal year 1952-1953, said sums to be expended under the direction and supervision of the assistant director of the budget."

§ 166-11. Utilization of existing services and facilities.—In carrying out the provisions of this chapter, the Governor and the governing bodies of the political subdivisions of the State are authorized to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are authorized to cooperate with and extend such services and facilities to the Governor and to the civil defense organizations of the State upon request. (1951, c. 1016, s. 9.)

§ 166-12. Eligibility of civil defense personnel; oath required.—(a) No person shall be employed or associated in any capacity in any civil defense

organization established under this chapter who advocates or has advocated a change by force or violence in the constitutional form of the government of the United States or in this State, or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States, or has ever been a member of the Communist Party. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

"I, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence; and that during such time as I am a member of the State Civil Defense Agency, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence, so help me God."

(b) No person shall be barred from holding office in any capacity under this chapter by reason of the prohibition against double office holding. (1951, c. 1016, s. 10.)

§ 166-13. Duration of chapter.—This chapter and all powers conferred by it shall expire and become null and void and all civil defense organizations created under the provisions hereof shall be disbanded on March 1, 1953. On said date all authority for whatever purpose herein contained or granted shall absolutely cease to exist. (1951, c. 1016, s. 12.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

July 30, 1951

I, Harry McMullan, Attorney General of North Carolina, do hereby certify that the foregoing 1951 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

HARRY McMULLAN,
Attorney General of North Carolina

